

Special Review

Use of Energy Utility Assessments



Financial Audit Division

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- Strengthen Legislative Oversight, and
- Support Good Financial Management.

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Representative Tim Wilkin, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Brian Lamb, Commissioner
Department of Administration

Mr. Glenn Wilson, Commissioner
Department of Commerce

We have conducted a special review of the use of energy utilities' assessments provided for and appropriated in Laws of 2001, Chapter 212, Article 8.

We conducted this review in response to a request from a member of the Minnesota Legislature who alleged that the departments of Administration and Commerce unlawfully used a significant portion of an annual \$500,000 assessment imposed on utilities. In response to this concern, we agreed to examine the use of these assessments by both departments.

The following summary highlights our objectives and conclusions. We discuss the issues involved more fully in the individual chapters of the report.

This report is intended for the information of the Legislative Audit Commission and the management of the departments of Commerce and Administration. This restriction is not intended to limit the distribution of this report, which was released as a public document on August 7, 2003.

/James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Claudia J. Gudvangen

Claudia J. Gudvangen
Deputy Legislative Auditor

End of Fieldwork: May 30, 2003

Report Signed On: August 4, 2003

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Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

James Nobles	Legislative Auditor
Claudia Gudvangen, CPA	Deputy Legislative Auditor
Brad White, CPA, CISA	Audit Manager
Tony Toscano	Audit Director
Marla Conroy, CPA, CISA	Director of Investigations
Sonya Johnson, CPA	Investigator

Exit Conference

The report was discussed with the following representatives from the departments of Commerce and Administration:

Department of Administration:

Brian Lamb	Commissioner
Kath Ouska	Assistant Commissioner, Facilities Services
Larry Freund	Financial Management Director
Judy Hunt	Internal Auditor

Department of Commerce:

Glenn Wilson	Commissioner
Edward Garvey	Deputy Commissioner
Patrick Nelson	Deputy Commissioner
Mike Blacik	Assistant Commissioner
Mim Stohl	Chief Financial Officer
Janet Streff	Manager, Energy Division
Robert Schram	Accounting Officer
Jim Alan	TAM Administrator

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Report Summary

Laws of Minnesota 2001, Chapter 212, addressed various issues relating to energy conservation, including development of sustainable building design guidelines for all new state buildings and establishing energy efficiency benchmarks and energy conservation goals for existing public buildings. Another provision created the position of reliability administrator in the Department of Commerce and authorized the payment of general administrative costs (not to exceed \$1.5 million in a fiscal year) for the position. The commissioner of Commerce was directed to recover the administrative costs through assessments on energy utilities. The amounts collected from the assessments are to be deposited in the Special Revenue Fund and are appropriated to the commissioner of Commerce for the specified purposes. The commissioner also was directed to transfer up to \$500,000 of the \$1.5 million to the commissioner of Administration for development of the sustainable building design guidelines.

Our objective in conducting this special review was to determine whether the Department of Commerce's billing of utilities and subsequent transfer of amounts to the Department of Administration, as well as the Department of Administration's expenditure of those funds, complied with appropriation laws and other legal requirements.

Key Conclusions

The Department of Administration's use of an appropriation designated for sustainable building design guidelines did not comply with the appropriation language. During fiscal years 2002 and 2003 (through May 30, 2003), the Department of Administration inappropriately expended approximately \$161,200 of the appropriation on energy benchmarks for existing public buildings. The department stopped work on the project on February 20, 2003, when concerns were raised about the use of funds for energy benchmarking. We recommend that the department repay the assessment account for the unallowable charges or seek legislative authority to otherwise resolve the inappropriate use of assessment moneys. In addition, the Department of Commerce assessed energy utilities for these unallowable costs and also collected assessments in advance rather, than on a reimbursement basis, as required by law. On May 27, 2003, in part because of questions raised about the issue, the Department of Commerce refunded approximately \$358,000 to energy utilities for over-assessments. Once fiscal year 2003 financial activity is finalized, additional adjustments may be necessary.

During the 2003 Special Session, the Legislature passed an energy bill that allows the departments to use appropriated funds (up to \$500,000 annually) for both the sustainable building and energy benchmarking initiatives. The revised law, effective May 30, 2003, also states the Department of Commerce is to assess energy utilities for these costs.

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Chapter 1. Introduction

In May 2001, the Legislature passed Laws of Minnesota 2001, Chapter 212, the Minnesota Energy Security and Reliability Act. One provision of the legislation directed the departments of Commerce and Administration to develop sustainable building design guidelines for all new state buildings by January 15, 2003. In addition, the legislation directed the Department of Administration to maintain information on energy usage in all public buildings for the purpose of establishing energy efficiency benchmarks and energy conservation goals. The Act also established the position of reliability administrator within the Department of Commerce and provided funding for administrative costs of the position through assessments on energy utilities.

In February 2003, State Representative Philip Krinkie reported to our office a possible unlawful use of public funds by the departments of Commerce and Administration (Appendix A). Specifically, he reported that the two departments had inappropriately used funds designated for sustainable building design guidelines to develop benchmarks for existing public buildings.

Objective and Methodology

Our objective in conducting this special review was to answer the following questions related to Laws of Minnesota 2001, Chapter 212:

- Did the departments of Commerce and Administration comply with applicable laws and other legal requirements when expending funds designated for the development of sustainable building design guidelines?
- Did the Department of Commerce appropriately assess energy utilities for reimbursement of costs related to the development of sustainable building design guidelines?

In conducting this review, we interviewed personnel from the departments of Commerce and Administration. We examined supporting documentation related to the assessments collected from the energy utilities by the Department of Commerce. We examined the Department of Administration's accounting records related to the expenditure of the assessments, including invoices and professional/technical service contracts.

Chapter 2 provides a historical perspective on the legislation and includes our conclusions from this review.

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Chapter 2. Use of Energy Utility Assessments

Chapter Conclusions

The Department of Administration's use of an appropriation designated for sustainable building design guidelines did not comply with the appropriation language. During fiscal years 2002 and 2003 (through May 30, 2003), the Department of Administration inappropriately expended approximately \$161,200 of the appropriation on energy benchmarks for existing public buildings. The department stopped work on the project on February 20, 2003, when concerns were raised about the use of funds for energy benchmarking. In addition, the Department of Commerce assessed energy utilities for these unallowable costs and also collected assessments in advance, rather than on a reimbursement basis, as required by law. On May 27, 2003, following our review of the concern, the Department of Commerce issued refunds totaling approximately \$358,000 to energy utilities for over-assessments.

During the 2003 Special Session, the Legislature passed an energy bill that allows the departments to use appropriated funds (up to \$500,000 annually) for both the sustainable building and energy benchmarking initiatives. The new legislation was effective May 30, 2003.

On May 29, 2001, Governor Ventura signed Senate File No. 722, the Minnesota Energy Security and Reliability Act. The bill, which became Laws of Minnesota 2001, Chapter 212, addressed several energy-related topics. In part, Article 1, Sections 2 and 3 provided the following:

Sec. 2 Sustainable Building Guidelines

The department of administration and the department of commerce, with the assistance of other agencies, shall develop sustainable building design guidelines for all new state buildings by January 15, 2003. The primary objectives of these guidelines are to ensure that all new state buildings initially exceed existing energy code, as established in Minnesota Rules, chapter 7676, by at least 30 percent. The guidelines must focus on achieving the lowest possible lifetime cost for new buildings and allow for changes in the guidelines that encourage continual energy conservation improvements in new buildings...The guidelines established under this section are mandatory for all new buildings receiving funding from the bond proceeds fund after January 1, 2004.

Sec. 3 Benchmarks for Existing Public Buildings

The department of administration shall maintain information on energy usage in all public buildings for the purpose of establishing energy efficiency benchmarks and energy conservation goals. The department shall report preliminary energy conservation goals to the chairs of the senate telecommunications, energy and utilities committee and the house regulated industries committee by January 15, 2002. The department shall develop a comprehensive plan by January 15, 2003,^(Note 1) to maximize electrical and thermal energy efficiency in existing public buildings through conservation measures having a simple payback within ten to 15 years...

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Note 1: Laws of Minnesota 2002, Chapter 398, Section 8, amended this provision to require the department, in coordination with the Department of Commerce, to develop a comprehensive plan by January 15, 2004.

The law also established the position of reliability administrator within the Department of Commerce. The administrator serves as a technical advisor and independent source of expertise to the commissioner of Commerce, the Public Utilities Commission, legislative electric energy task force, and the public in general on issues related to the reliability of the electric system. Laws of Minnesota 2001 Chapter 212, Article 8, Section 10, Subd. 2 (c) (1) required the Department of Commerce to pay the general administrative costs of the administrator, not to exceed \$1,500,000 in a fiscal year, and to assess energy utilities for reimbursement of those administrative costs. Article 8 of the law further required the commissioner of Commerce to transfer up to \$500,000 annually to the commissioner of Administration for implementation of the sustainable building design guidelines. The provisions of Chapter 212, relating to the reliability administrator and the transfer of funds, were codified in Minn. Stat. Section 216C.052.

Employees of the departments of Commerce and Administration subsequently discovered technical and typographical errors in the 2001 law. In July 2001, the commissioners of Commerce and Administration issued a joint memo to Senator Ellen Anderson, Senator James Metzen, Representative Dan McElroy, and Representative Ken Wolf apprising them of three specific technical errors with the language in the bill (Appendix B). Two of the errors impacted the funding for the Sustainable Building Design Guidelines. In part, the memo stated:

...The reference is to Article 1, Section 2 [Sustainable Building Design Guidelines] The reference should be to Article 1, Sections 2 and 3 [Sustainable Building Design Guidelines and Benchmarking of Existing Public Buildings]. Department of Administration prepared an analysis of the cost of implementing sections 2 and 3 and is requesting the flexibility to use the appropriation in the implementation of both requirements...

The memo concluded stating “..... *Our agencies will respectfully assume that we have permission to move forward with the work described above as proposed via legislative intent. If that is not correct, would you please contact..... and they will work with you to help find an amenable solution.*” The departments of Commerce and Administration did not receive a written response to their July 2001 memo and proceeded to use the appropriation to implement both the sustainable building design guidelines and benchmarking initiatives.

During the 2002 legislative session, the departments of Commerce and Administration sought changes to the 2001 law to ensure the departments could use the \$500,000 annual appropriation for both the sustainable building design guidelines and benchmarking initiatives. Although some changes to the law were passed in 2002, the \$500,000 annual appropriation remained designated for implementing the sustainable building design guidelines. The law continued to require energy benchmarking; however, the Legislature did not provide additional funding for this initiative.

During the 2003 legislative session, the departments of Commerce and Administration again sought changes to the Laws of Minnesota 2001, Chapter 212 to allow the \$500,000 appropriation to be used for benchmarking. On May 29, 2003, Governor Pawlenty signed Laws of Minnesota

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2003, 1st Special Session, Chapter 11, which included the requested changes and was effective May 30, 2003. Specifically, Minn. Stat. Section 216C.052 was revised as follows:

Subd. 2c(1) The department of commerce shall pay the general administrative costs of the administrator, not to exceed \$1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs.

Subd. 3 In addition to the amount noted in subdivision 2, the commissioner may assess utilities, using the mechanism specified in that subdivision, up to an additional \$500,000 annually through June 30, 2006. The amounts assessed under this subdivision are appropriated to the commissioner, and some or all of the amounts assessed may be transferred to the commissioner of administration, for the purposes specified in section 16B.325 [*sustainable building design guidelines*] and Laws 2001, chapter 212, article 1, section 3 [*energy benchmarking of existing public buildings*], as needed to implement those sections.

Although the law has been changed, we are concerned with the departments of Commerce and Administration's compliance with the Laws of Minnesota 2001, Chapter 212 prior to May 30, 2003, the effective date of the changes. In addition, the new law continues to provide for the transfer of funds to the Department of Administration "as needed" and provides that the assessment would be subject to Minn. Stat. Section 216B.62, Subd. 3, which allows an estimated quarterly assessment with a subsequent adjustment to actual costs. We discuss these concerns in the following two findings.

1. The departments of Commerce and Administration did not comply with the appropriation law when expending funds.

The Department of Administration inappropriately used approximately \$161,200 of funds appropriated for sustainable building design guidelines to pay costs of benchmarking energy performance in existing public buildings. Laws of Minnesota 2001, Chapter 212, Article 8, Section 18, in effect prior to May 30, 2003, directed the commissioner of Commerce to transfer up to \$500,000 annually to the Commissioner of Administration for implementing the sustainable building design guideline requirements.

As discussed previously, the commissioners of Commerce and Administration had requested flexibility to use the appropriated funds for both sustainable building design guidelines and benchmarking. Prior to May 2003, the Legislature did not change the legal provisions governing the appropriation. However, in fiscal years 2002 and 2003, the Department of Administration used the funding for both programs, which violated the appropriation language.

We reviewed the Department of Administration's accounting records to distinguish between expenditures for sustainable building design guidelines versus expenditures for energy benchmarking. In some instances, we were unable to make a clear distinction between the two activities. Table 2-1 presents the results of our analysis of expenditures and identifies unallowable costs based on the appropriation language.

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**Table 2-1
Expenditures for Sustainable Building Guidelines
and Benchmarks for Existing Public Buildings
Fiscal Years 2002 and 2003**

Services	<u>Total Expenditures</u>	<u>Allowable Expenditures</u>	<u>Unallowable Expenditures</u> ⁽¹⁾
Architecture and Engineering ⁽²⁾	\$ 333,000	\$171,800	\$161,200
Other Professional/Technical ⁽³⁾	190,000	190,000	0
Management Analysis Division ⁽⁴⁾⁽⁵⁾	<u>39,298</u>	<u>39,298</u>	<u>0</u>
Total	<u>\$ 562,298</u>	<u>\$401,098</u>	<u>\$161,200</u>

Notes:

- 1- Unallowable expenditures are costs associated with the development of the benchmarks for existing public buildings through May 30, 2003.
- 2- The Department of Administration contracted with LHB Engineers and Architects for \$333,000 to perform the following tasks: project management, development of sustainable building design guidelines, and benchmarking of existing public buildings. The contract was in effect from August 1, 2002, through March 15, 2003.
- 3- The Department of Administration contracted with the University of Minnesota College of Architecture and Landscape Design for \$205,000 to report on existing guidelines, draft and finalize guidelines, and develop a publicly accessible website with guidelines and other supporting tools. The contract was in effect from August 29, 2002, through March 15, 2003. The University of Minnesota has not completed or invoiced the Department of Administration for one remaining task valued at \$15,000.
- 4- The Department of Administration contracted with its Management Analysis Division for project design and administrative support, including drafting requests for proposals and finalizing the contracting process. The services provided by the Management Analysis Division encompassed both initiatives. We were unable to determine the value of services related to the sustainable building design guidelines versus the benchmarks for existing public buildings. Staff told us that the time spent on benchmarking was limited.
- 5- The Department of Administration's Management Analysis Division incurred \$39,298 of expenditures from April 2002 through March 2003. This amount included \$20,825 of expenses that were incurred in fiscal year 2002, but recorded as fiscal year 2003 expenditures on the state's accounting system.

Source: Department of Administration vendor invoices and the Minnesota Accounting and Procurement System (MAPS).

In addition, the Department of Commerce did not assess energy utilities for all administrative costs of the reliability administrator, including salaries, office rent, and travel expenses. The Department of Commerce inappropriately used General Fund monies to pay \$7,500 in payroll costs for the department's reliability administrator. The law states that the department must assess the general administrative costs of the reliability administrator to energy utilities. The department hired a reliability administrator on May 28, 2002, incurring approximately \$7,500 in payroll costs through June 30, 2002. Although the department originally planned to pay these costs through assessments, it had difficulties when billing energy utilities. The department sent invoices totaling \$507,450 to companies; however, it collected \$499,013 after resolving billing errors. The amount collected was insufficient to pay the administrator's salary and the separate amount invoiced by the Department of Administration. On August 20, 2002, the Department of Commerce shifted the administrator's fiscal year 2002 salary to the General Fund and paid the Department of Administration \$499,013.

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Recommendations

- *The Department of Administration should reimburse the energy assessment Special Revenue Fund account \$161,200 for unallowable energy benchmarking costs, or seek legislative authority to otherwise resolve the inappropriate use of assessment moneys.*
- *The Department of Commerce should assess the energy utilities and reimburse the General Fund \$7,500 for fiscal year 2002 reliability administrator payroll costs.*
- *The Department of Commerce should ensure it assesses energy utilities for all general administrative costs of the reliability administrator.*

2. The Department of Commerce did not assess sustainable building guidelines costs to energy utilities in compliance with appropriation laws.

The Department of Commerce inappropriately assessed energy utilities for sustainable building guidelines costs not yet incurred and for unallowable costs related to energy benchmarking, as discussed in Finding 1. Although the law, in effect prior to May 30, 2003, referred to Minn. Stat. Section 216B.62, authorizing quarterly assessments based on estimated expenditures for the period, it specifically stated that utilities would be assessed through reimbursement. The Department of Commerce did not assess energy utilities for actual expenditures incurred, nor did the assessments comply with Minn. Stat. Section 216.B.62.

In June 2002, the Department of Commerce assessed energy utilities \$500,000 for sustainable building guidelines and public building benchmarking costs, based on an invoice from the Department of Administration. On May 30, 2002, the Department of Administration submitted the \$500,000 invoice, even though it only had incurred expenditures totaling \$20,825. The Department of Administration's invoice included estimated costs of future contracts scheduled for award in July 2003. The invoice also included costs for future work to be performed by the Department of Administration's Management Analysis Division.

In December 2002, the Department of Commerce assessed energy utilities approximately \$566,000 for fiscal year 2003 based, in part, on another \$500,000 invoice submitted by the Department of Administration. As of May 30, 2003, however, the Department of Administration had only incurred \$380,273 in allowable costs. In part because of questions raised about the funding and the previous transfer, the Department of Commerce only transferred \$63,285 to the Department of Administration.

Table 2-2 summarizes the collection and expenditure of assessments for the reliability administrator and sustainable building design guidelines programs. Because the departments of Administration and Commerce did not appropriately estimate allowable costs for these activities, the Department of Commerce over-assessed energy utilities for fiscal year 2002. On May 27, 2003, the Department of Commerce issued refunds totaling \$358,000 to energy utilities for the over assessments. If there is a remaining balance after payment of final fiscal year 2003 allowable costs, it should be adjusted in future energy assessments.

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Table 2-2
Summary of Energy Utility Assessment Financial Activity
Fiscal Years 2002 and 2003

	<u>2002</u>	<u>2003</u> ⁽¹⁾	<u>Total</u>
Energy Utility Assessment Collections	\$499,013	\$565,921	\$1,064,934
Less: Refund to Energy Utilities	<u>0</u>	<u>357,941</u>	<u>357,941</u>
Net Collections from Energy Utilities	<u>\$499,013</u>	<u>\$207,980</u>	<u>\$ 706,993</u>
Department of Administration Costs	\$ 20,825	\$380,273	\$ 401,098
Reliability Administrator Costs ⁽²⁾	<u>7,528</u>	<u>172,096</u>	<u>179,624</u>
Total Incurred Costs	<u>\$ 28,353</u>	<u>\$552,369</u>	<u>\$ 580,722</u>
Assessment Balance	<u>\$470,660</u>	<u>(\$344,389)</u>	<u>\$ 126,271</u>

Notes:

- (1) Fiscal year 2003 financial activity represents actual receipts and disbursements processed as of June 30, 2003. The departments of Commerce and Administration could process additional transactions relating to fiscal year 2003 after June 30, 2003. If there is a remaining balance, the amount should be adjusted for in future assessments.
- (2) Fiscal year 2002 payroll costs of the reliability administrator inappropriately paid from General Fund, but are allowable for recovery through assessment of energy utilities.

Source: Departments of Commerce and Administration accounting records.

The revised law, effective May 30, 2003, which governs the assessment for sustainable building guidelines and energy benchmarking costs, eliminated the reimbursement requirement and provides that:

For purposes of administrative efficiency, the department shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures do not conflict with this subdivision.

Section 216B.62 authorizes quarterly assessments based on an estimate of total expenditures for the period. The assessment for the third quarter of each fiscal year is to be adjusted to compensate for the amount that actual expenditures for the preceding fiscal year were more or less than the estimates previously assessed.

Recommendations

- *The Departments of Commerce should ensure that any over-assessment is either repaid to the energy utilities or credited against future energy utility assessments.*
- *The Department of Commerce should base future transfers to the Department of Administration on estimated costs to implement the sustainable building design guidelines and energy benchmarking of existing public buildings, with an adjustment to actual costs the following fiscal year.*

Phillip Krinkie
State Representative
District 53A
Ramsey and Anoka Counties



Minnesota House of Representatives

February 20th, 2003

Mr. James Nobles
Legislative Auditor
1st Floor Centennial Office Building
658 Cedar St.
Saint Paul, MN 55155

Dear Mr. Nobles,

In accordance with Minnesota Statutes 609.456, subdivision 2, I am reporting to you that I have discovered evidence of possible unlawful use of public funds by a state agency.

Specifically, the Departments of Administration and Commerce have apparently misused and have further plans to misuse a significant portion of an annual \$500,000 allotment of an assessment imposed on utilities.

Contained within the Minnesota Energy Security and Reliability Act (Laws 2001, Chapter 212) was an annual \$1.5million assessment on utilities. (Article 8, Section 10, Subd. 2, codified in Minnesota Statutes Sec. 216C.052.) A later section of the Act (Article 8, Sec. 18, codified as M.S. 216C.052 Subd. 3) designated \$500,000 of that assessment to implement the "sustainable building guidelines" found earlier in the bill.

According to testimony by the Departments of Commerce and Administration in the House Capital Investment Committee on Wednesday, February 19th, 2003, a portion of those funds has been used to and a more significant amount of those funds is planned for use in developing benchmarks for existing public buildings. (See Laws 2001, Chapter 212, Article 1 Sec. 3)

This use of those funds for benchmarking clearly violates the law, which specifically designates those funds for development of sustainable building guidelines. Article 8, Section 18 of Act reads: "the commissioner of commerce shall transfer up to \$500,000 annually of the amounts provided...to the commissioner of administration for the purposes provided in Article 1, section 2, as needed to implement that section." (Emphasis added)

While some legislators may have intended the appropriation to include the benchmarking requirement that was in an adjacent section of the Act, (Article 1, section 3) close doesn't count when it comes to expenditures of public dollars. These funds are statutorily limited to sustainable building guidelines under current law.

Thank you for your attention to this matter.

Sincerely,

/s/ Phil Krinkie

Phil Krinkie
Chairman, House Capital Investment Committee

c.c. Commissioner McElroy, Commissioner Wilson



TO: Senator Ellen Anderson
 Senator James Metzen
 Representative Dan McElroy\
 Representative Ken Wolf

FROM Commissioner James Bernstein, Department of Commerce
 Commissioner David Fisher, Department of Administration

RE: Technical Changes Needed for 2001 Minn. Laws Ch. 212(S.F. 722)

DATE: July 13, 2001

The Department of Administration and the Department of Commerce would like to thank you for your support, from both a policy and fiscal perspective, of Minn. Laws Ch. 212, the Minnesota Energy Reliability and Security Act.

Upon subsequent review of the bill, we have discovered three typographical errors that cross-reference either an existing statute or a section in the new legislation itself and therefore identify the wrong section. Interpreted literally, these errors could impact the ability of the involved parties to properly implement the legislation. It is our hope that upon raising these issues we will have permission to implement the legislation based on legislative intent, and make the language corrections early in the 2002 session.

We respectfully request that the following provisions be modified:

1. Page 44, line 2 (Article 7, Section 30, Subd. 3, Clause 2)

The reference is to Minnesota Statutes, Section 216B.241. The correct section is 216B.243. This section of the new legislation creates an electricity transmission planning process that replaces the requirement for a Certificate of Need for individual projects and utilizes the decision criteria for a Certificate of Need to do so. The cross-reference should be to the decision criteria in the Certificate of Need statute, Section 216B.243, instead of to the provision governing ownership of an energy conservation improvement in Section 216B.241.

2. Page 69, line 18 (Article 8, Section 18 – Appropriation)

The reference to Section 11 should be to Section 10. The appropriation from which the Commissioner of Commerce is to transfer \$500,000 to the Commissioner of Administration is made in Section 10, Subdivision 2. Section 11 does not appropriate money. It requires an evaluation of certain energy conservation programs.

Senator Ellen Anderson
Senator James Metzen
Representative Dan McElroy\
Representative Ken Wolf
July 13, 2001
Page 2

3. Page 69, line 20 (Article 8, Section 18 – Appropriation)

The reference is to Article 1, Section 2. The reference should be to Article 1, Sections 2 and 3. The Department of Administration prepared an analysis of the cost of implementing sections 2 and 3 and is requesting the flexibility to use the appropriation in the implementation of both requirements.

Staff from the Department of Administration is currently working with staff from the Department of Commerce to obtain energy usage data from public buildings in time to analyze it and report back to the legislature by January 15, 2002 as required by Section 3. This is an intensive effort of gathering data that does not now exist in a central location, formatting the data so it can be compared with similar data, creating usable data bases, and analyzing the data. In addition, it is likely that the development of sustainable building guidelines required in Section 2 will require the agencies to seek outside expertise. The \$500,000 is needed to support both efforts.

Thank you again for your help supporting forward-looking energy policy for the citizens of Minnesota. Our agencies will respectfully assume that we have permission to move forward with the work described above as proposed via legislative intent. If that is not correct, would you please contact either Laura Bishop, 651-297-5525, Assistant Commissioner, Department of Administration or Jen Peterson, 651-297-1295, Legislative Affairs Director, Department of Commerce and they will work to help find an amenable solution.

Sincerely,

/s/ David Fisher

/s/ James Bernstein

DAVID FISHER
Commissioner
Department of Administration

JAMES BERNSTEIN
Commissioner
Department of Commerce

DF/JB/JP/jl

c: Senator Steve Kelley
Joe Bagnoli, Office of the Governor
Mike Bull, House Research
Brian Fahey, House Regulated Industries Committee
John Fuller, Senate Counsel
Andy Gildea, House Jobs and Economic Development Finance
Don Jorovsky, Senate Jobs, Housing and Community Development
Ron Ray, Office of the Revisor
Faye Sparks, Senate Telecommunications, Energy and Utilities Committee



Office of the Commissioner
200 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Voice: 651.296.1424
Fax: 651.297.7909
TTY: 651.297.4357

July 31, 2003

James R. Nobles, Legislative Auditor
First Floor South, Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

Re: Special Review regarding to The B3 Project for Minnesota Sustainable Building Design Guidelines and Energy Benchmarks

Thank you for the opportunity to discuss and comment on the first report finding and recommendation arising from your special review of the Departments of Commerce and Administration (Admin). We appreciate the efforts of your office in completing this review.

Finding 1: The departments of Commerce and Administration did not comply with the appropriation law when expending funds.

Recommendation: (insert revised report text verbatim)

The Department of Administration should reimburse the energy assessment Special Revenue Fund account \$161,200 for unallowable energy benchmarking costs, or seek legislative authority to otherwise resolve the inappropriate use of assessment monies.

We concur with the above finding. As the report indicates, on February 20, 2003 we ceased all project activities for both the sustainable building design guidelines and the energy benchmarks for existing public buildings so as not to continue use of the energy utilities assessments in a noncompliant manner. As a result of this decision to suspend all project related activities, the Department of Commerce refunded \$358,000 to the utilities last spring, reflecting the revised estimated expenditures for the fiscal year 2002-2003 period. Of the possible \$2.5 million in utilities assessments for this project (\$500,000 annually for fiscal years 2002 through 2006), we project total assessments will equal approximately \$1.9 million, although total project costs will be \$161,200 more. We acknowledge our liability of \$161,200; clearly the energy utilities should

James R. Nobles
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July 31, 2003

not bear the burden of the benchmarking project costs incurred prior to the enactment of the 2003 legislation amending the project's appropriation language.

We appreciate that the recommendation offers Admin flexibility in the approach to take to remedy the \$161,200 of collected assessments spent erroneously in prior fiscal years for benchmarking. We plan to work with the Department of Commerce to explore the options available to us and then take the necessary corrective action addressing the audit issue. At the conclusion of the project, with the Department of Commerce's assistance, we intend to prepare a detailed accounting of all project costs incurred and paid, and all amounts assessed and collected from the energy utilities.

Kath Ouska, Assistant Commissioner of Facilities Management Services, will be responsible for implementation of the recommendation. We target a completion date of June 30, 2004.

We are committed to achieving the full scope of the project, even with reduced project dollars. We have a good definition of desired outcomes for project phases 1 through 3, and are refining those for project phases 4 and 5. We intend to employ more efficient techniques (e.g. sampling) for achieving our objectives and to present the legislature with a progress report in January 2004.

Should you have any additional questions or seek information on our progress to implement the recommendation, please feel free to contact Kath Ouska at 651-296-6852 or Judy Hunt at 651-296-6298.

Sincerely,

/s/ Brian J. Lamb

Brian J. Lamb
Commissioner

Cc: Claudia Gudvangen, CPA, Deputy Legislative Auditor
Janet Streff, Manager, State Energy Office, Department of Commerce
Kath Ouska, Assistant Commissioner, Admin
Larry Freund, Financial Management Director, Admin
Judy Hunt, CIA, CPA, Internal Auditor, Admin
file



July 31, 2003

James Nobles, Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

Thank you for conducting a Special Review of the Departments of Commerce and Administration with respect to energy utilities assessments. As with all audits and reviews, we welcome your guidance and we will implement your recommendations.

The Department of Commerce responses to the Special Review findings follow. Mim Stohl, Chief Financial Officer for the Department of Commerce, will be responsible for implementation.

Finding #1.

The Departments of Commerce and Administration did not comply with the appropriation law when expending funds.

Recommendations:

- a) The Department of Administration should reimburse the energy assessment Special Revenue Fund account \$161,200 for unallowable energy benchmarking costs.
Response: The Department of Commerce will work with the Department of Administration to ensure that the energy assessment Special Revenue fund account will be reimbursed \$161,200 for the energy benchmarking costs that were unallowable at that time.
- b) The Department of Commerce should assess the energy utilities and reimburse the General Fund \$7,500 for fiscal year 2002 reliability administrator payroll costs.
Response: The Department of Commerce will assess energy utilities \$7,500. The amount will be included in the assessment dated September 1, 2003. Payments received from energy utilities will be deposited in the General Fund.
- c) The Department of Commerce should ensure it assesses energy utilities for all general administrative costs of the reliability administrator.
Response: The Department of Commerce will assess energy utilities for all costs of the reliability administrator. In the future, the department will estimate and bill in advance, the

anticipated reliability administrator costs for each quarter of the fiscal year. The department will make a settlement in the third quarter of the following fiscal year.. The settlement will be calculated by comparing actual costs to the estimated costs billed in the preceding fiscal year. Energy utilities will be billed accordingly (see Minnesota Statutes, Section 216B.62).

Finding #2.

The Department of Commerce did not assess sustainable building guidelines costs to energy utilities in compliance with appropriation laws.

Recommendations:

- a) The Department of Commerce should ensure that any over-assessment is either repaid to the energy utilities or credited against future energy utility assessments.

Response: The Department of Commerce will reconcile expenditures against receipts for both FY 2002 and FY 2003. Any over assessments will either be credited to the energy utilities on the assessment dated December 1, 2003, or repaid to the energy utilities prior to December 1, 2003.

- b) The Department of Commerce should base future transfers to the Department of Administration on estimated costs to implement the sustainable building design guidelines and energy benchmarking of existing public buildings, with an adjustment to actual costs each fiscal year.

Response: The Department of Commerce will assess energy utilities in advance for the estimated costs that the Departments of Commerce and Administration are expected to incur during the following quarter. These costs will be assessed to energy utilities 30 days before the beginning of the quarter. The department will make a settlement in the third quarter of the following fiscal year. The settlement will be calculated by comparing actual costs to the estimated costs billed in the preceding fiscal year. Energy utilities will be billed accordingly (see Minnesota Statutes, Section 216B.62). The Department of Commerce will meet with the Department of Administration to set up an invoicing schedule based on estimated quarterly costs.

Thank you for the time and effort you and your staff put into this special review. Thank you for your thoughtful approach to the study. We enjoyed working with everyone. We look forward to working with you again.

Sincerely,



Glenn Wilson, Commissioner