CHAPTER 543—S.F.No. 1648

An act relating to the agricultural economy; authorizing the commissioner of finance to issue obligations to assist in the use of agricultural-industrial facilities in the city of Detroit Lakes.

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

Section 1. **PURPOSE.**

The purpose of sections 1 to 14 is to develop the state's agricultural resources by extending credit on real estate security; to foster long-term economic growth and job creation by financing an agricultural-industrial facility; to prevent the loss of jobs and encourage and promote the creation of additional jobs in the state in the agricultural industry and in other businesses in the state served or affected by the agricultural industry; to promote the continued growth, and reduce the potential for and effects of a decline of economic activity in the state; and to ensure the preservation, growth, and diversification of the tax base of the state. State bonds are authorized to be issued and the proceeds of their sale are appropriated under the authority of the Minnesota Constitution, article XI, section 5, clause (h), and the proceeds must be applied in a manner consistent with this authority. In authorizing the financing of an agricultural-industrial facility, the legislature is acting in all respects for the benefit of the people of the state of Minnesota to serve the public purposes of developing the state's agricultural resources and fostering economic development within the state.

Sec. 2. **BOND ISSUE; SALE AUTHORIZATION.**

Subdivision 1. **GENERAL AUTHORIZATION; MAXIMUM PRINCIPAL AMOUNTS.** The commissioner of finance may issue and sell bonds of the state in one or more series or issues for the purposes provided in this section in the aggregate principal amount of up to $5,000,000 under the bonding authority specified in Minnesota Statutes, section 41B.19, subdivision 1. Bonds issued under this subdivision, other than refunding bonds, must be counted against the bonding limit imposed under section 41B.19, subdivision 1. Bonds to refund the foregoing bonds may be issued in the aggregate principal amount of up to $5,000,000, as provided in section 4, subdivision 2. Unless the context otherwise clearly requires, the reference to bonds shall include refunding bonds. Proceeds of the bonds and investment income on the proceeds are appropriated for the purposes specified in this section and section 4, subdivision 2.

Subd. 2. **LOAN, LEASE, AND REVENUE AGREEMENTS.** The commissioner of finance may loan the proceeds of the bonds or enter into lease agreements or other revenue agreements for the financing of an agricultural-industrial facility located in the city of Detroit Lakes. The facility may be owned by or leased to and the loan or loans may be made to a public body or any other person, public or private. Any loan, or if no loan has been made, any lease for the facility must require payments which, if timely paid when due, will be sufficient to pay when due all principal, interest, and premium scheduled to be payable on

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the bonds or any refunding bonds, unless a default has occurred under the loan or lease or any prior loan or lease. Any lease may provide for an option of the lessee to purchase all or any part of the facility at any price which the commissioner of finance may approve. The commissioner may provide for servicing of the loans and agreements, the times they are payable and the amount of payments, the amount of the loans and agreements, their security, and other terms, conditions, and provisions necessary or convenient in connection with them. The commissioner may enter into all necessary contracts and security instruments. All property financed in whole or in part with sale proceeds of the bonds or investment income from the proceeds must be pledged as collateral for the loans made or bonds issued under this section so long as no default has occurred under a loan.

Subd. 3. **NONPUBLIC DATA.** Business plans, financial statements, customer lists, and market and feasibility studies submitted in connection with the provision of financial assistance are nonpublic data, as defined in Minnesota Statutes, section 13.02, subdivision 9. The commissioner may make the data accessible to any person, agency, or public entity if the commissioner determines that access is required under state or federal securities law. To the extent provided by an order of the commissioner of finance, the bonds shall be payable first from revenues derived from the loan of bond proceeds or the lease of the facility, or any other amounts provided for in section 5, subdivision 2.

Subd. 4. **SECURITY.** The bonds are directly secured by a pledge of the full faith, credit, and taxing power of the state and must be issued in accordance with the Minnesota Constitution, article XI, sections 4 to 7. Bonds issued under this section are not subject to Minnesota Statutes, section 16B.06.

Subd. 5. **USE OF PROCEEDS.** The proceeds of the bonds issued in a principal amount not to exceed $5,000,000 may be used to finance the costs of acquiring, renovating, improving, or equipping all or any portion of an agricultural-industrial facility for processing turkeys or other agricultural products, and facilities related and subordinate to the facility, located in the city of Detroit Lakes and any costs of issuance, reserves, credit enhancement, or an initial period of interest payments related to the bonds or the facility or working capital. The bond proceeds are appropriated to the commissioner for the purposes specified in this section. With the approval of the commissioner, the owner of the facility may place a mortgage or security interest lien on the facility or any interest in the facility. The mortgage is exempt from the mortgage registry tax imposed under Minnesota Statutes, chapter 287. In the event of a default under the loan, lease agreement, or other revenue agreement, the facility, or any part of the facility, may be leased or sold to another person for any lawful purpose, subject to the approval of the commissioner. The commissioner's approval is not required if the bond trustee has taken control of the facility as a result of a default.

Sec. 3. **GENERAL POWERS.**

For the purpose of exercising the specific powers authorized under sections 1 to 14 and effectuating the other purposes of sections 1 to 14, the commissioner may:

(1) acquire, hold, pledge, assign, or dispose of real or personal property or any interest in property, including a mortgage or security interest in a facility described in section 2;

(2) enter into agreements, contracts, or other transactions with any federal or state agency or other governmental unit, any person and any domestic or foreign partnership, corporation, association, or organization, including contracts or agreements for administration and implementation of all or part of sections 1 to 14;

(3) acquire real property, or an interest therein, by purchase or foreclosure;

(4) enter into agreements with lenders, borrowers, or the issuers of securities for the purpose of regulating the development and management of any property financed in whole or in part by the proceeds of bonds or loans; and

(5) contract with, use, or employ any federal, state, regional, or local public or private agency or organization, legal counsel, financial advisors, investment bankers, or others, upon terms the commissioner considers necessary or desirable, to assist in the exercise of any of the powers authorized under sections 1 to 14 and to carry out the objectives of sections 1 to 14 and may pay for the services from bond proceeds or otherwise available department money.

Sec. 4. **APPLICABLE LAWS; REFUNDING BONDS.**

Subdivision 1. **BONDS.** Minnesota Statutes, sections 16A.631 to 16A.675, do not apply to the bonds authorized under section 2, except as provided in an order of the commissioner of finance or indenture authorizing the bonds, and except that Minnesota Statutes, sections 16A.641, 16.672, and 16A.675, other than section 16A.641, subdivisions 4 and 5, shall apply.

Subd. 2. **REFUNDING OF BONDS.** The commissioner from time to time may issue bonds for the purpose of refunding any bonds then outstanding, including the payment of any redemption premiums thereon, any interest accrued or to accrue to the redemption date, and costs related to the issuance and sale of the bonds. The proceeds of any refunding bonds may, in the discretion of the commissioner, be applied to the purchase or payment at maturity of the bonds to be refunded, to the redemption of such outstanding bonds on any redemption date, or to pay interest on the refunding bonds and may, pending such application, be placed in escrow to be applied to such purchase, payment, or redemption. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations that are authorized investments under Minnesota Statutes, section 11A.24. The income earned or realized on any such investment may also be applied to the payment of the bonds to be refunded, interest or premiums on the refunded bonds, or to pay interest on the refunding bonds. After the terms of the escrow have been fully satisfied, any balance of such proceeds and any investment income may be returned to the general fund or, if applicable, the state bond fund, for use in any lawful manner.

Subd. 3. **COMPLIANCE WITH FEDERAL LAW.** The commissioner may covenant and agree with the holders of the bonds that the state will comply, insofar as possible, with the provisions of the United States Internal Revenue Code now or hereafter enacted that are applicable to the bonds and that establish conditions under which the interest to be paid on the bonds will not be includable in gross income for federal tax purposes. The bonds may be issued without regard to whether the interest to be paid on them is includable in gross income for federal tax purposes.

Sec. 5. **AUTHORIZING ORDERS, TERMS, SALE, AND REVENUE SOURCES.**

Subdivision 1. **TERMS.** The bonds must be authorized by an order or orders of the commissioner of finance, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States, at such place or places within or without the state, and be subject to such terms of redemption or purchase prior to maturity as the order or orders may provide, or as may be provided in any indenture or indentures of trust. If, for any reason, whether existing at the date of issue of any bonds or at the date of making or purchasing any loan or securities from the proceeds or after that date, the interest on any bonds is or becomes subject to federal income taxation, this shall not impair or affect the validity of the provisions made for the security of the bonds. The bonds may be sold at public or private sale at a price or prices determined by the commissioner. The underwriting discount, spread, or commission paid or allowed to the underwriters of the bonds, however, must be an amount not in excess of the amount determined by the commissioner to be reasonable in the light of the risk assumed and the expenses of issuance, if any, required to be paid by the underwriters or prevailing market conditions and practices.

Subd. 2. **SOURCES OF REVENUES.** The bonds and interest payable thereon are payable from the following sources and are irrevocably appropriated for that purpose, but only to the extent provided in the order of the commissioner of finance or indenture authorizing or securing the bonds:

(1) revenues of any nature derived from the ownership, lease, operation, sale, foreclosure, or refinancing of a facility described in section 2;

(2) repayments of any loans made under sections 1 to 14;

(3) proceeds of any bonds;

(4) amounts in any account authorized by section 11 or 13;

(5) amounts payable under any insurance policy, guaranty, letter of credit, or other instrument securing the bonds;

(6) any other revenues which the commissioner may pledge but excluding state appropriations unless the appropriation was specifically designated for that purpose; and

(7) investment income on any of the sources specified in clauses (1) to (6).

Sec. 6. **OPTIONAL ORDER AND CONTRACT PROVISIONS.**

Any order of the commissioner of finance authorizing any bonds or any issue of bonds or any indenture may contain provisions, which may be a part of the contract with the holders of the bonds, as to the matters referred to in this section.

(a) It may pledge or create a lien on money or property and any money held in trust or otherwise by others to secure the payment of the bonds or of any series or issue of bonds and interest thereon and of any sums due to the trustee under the indenture, and may grant different priorities in the lien for different series of bonds, subject to any agreements with bondholders which exist.

(b) It may provide for the custody, collection, securing, investment, and payment of money.

(c) It may set aside reserves or sinking funds and provide for their regulation and disposition and may create other special funds into which money may be deposited.

(d) It may limit the loans and securities to which the proceeds of sale of bonds may be applied and may pledge repayments thereon to secure the payment of the bonds or of any series or issue of bonds.

(e) It may limit the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.

(f) It may prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which that consent may be given.

(g) It may vest in a trustee or trustees property, rights, powers, and duties in trust determined by the commissioner, which may include any or all of the rights, powers, and duties of the bondholders, or may limit the rights, powers, and duties of the trustee. It may make contracts with a trustee or trustees authorizing the trustee or trustees to invest in investments that may be invested in by the state board of investment under Minnesota Statutes, section 11A.24, and apply, or dispose of and use money in any account.

(h) It may define the acts or omissions to act which constitute a default in the obligations and duties of the commissioner and may provide for the rights and remedies of the holders of bonds in the event of a default, and provide any other matters of like or different character, consistent with the general laws of the state and other provisions of sections 1 to 14, which in any way affect the security or protection of the bonds and the rights of the bondholders.

(i) It may incur obligations under the indenture or under any paying agency, bond registrar agreement, or escrow agreement to pay the compensation and expenses of the trustee, paying agent, bond registrar, or escrow agent for the bonds and to pay any sums required to be rebated to the United States to comply with applicable tax laws; and a sum sufficient to satisfy these obligations is annually appropriated to the commissioner from the general fund to the extent other revenues available for that purpose are insufficient.

Sec. 7. **PLEDGES; VALIDITY.**

Any pledge made by the commissioner of finance is valid and binding from the time the pledge is made. The money or property pledged and later received by the commissioner is immediately subject to the lien of the pledge without any physical delivery of the property or money or further act, and the lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commissioner of finance, whether or not those parties have notice of the lien or pledge. Neither the order nor any other instrument by which a pledge is created need be recorded. Upon the finding of the commissioner of finance by order or in an indenture that all proceedings, actions, and events required for the valid issuance and sale of any issue of bonds have occurred, upon issuance all the proceedings, actions, or events shall be considered to have conclusively occurred at or prior to the issuance.

Sec. 8. **BONDS; NONLIABILITY OF INDIVIDUALS.**

The commissioner of finance and the commissioner's staff and any person executing the bonds are not personally liable on the bonds or subject to any personal liability or accountability by reason of their issuance.

Sec. 9. **BONDS; PURCHASE AND CANCELLATION.**

The commissioner of finance, subject to agreements with bondholders which may then exist, has power out of any funds available for the purpose to purchase bonds of the commissioner at a price not exceeding (a) if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the bonds are not redeemable, the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

Sec. 10. **STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.**

The state pledges and agrees with the holders of any bonds that the state will not limit or alter the rights vested in the commissioner of finance to fulfill the terms of any agreements made with the bondholders, or in any way impair the rights and remedies of the holders until the bonds, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. The commissioner may include this pledge and agreement of the state in any agreement with the holders of bonds issued under sections 1 to 14.

Sec. 11. **FUNDS AND DEBT SERVICE ACCOUNTS.**

Subdivision 1. **FUNDS.** The commissioner of finance or any trustee appointed by the commissioner under sections 1 to 14 shall establish and maintain an agricultural-industrial facilities fund for the facilities described in section 2. Except for amounts required by the commissioner to be deposited in a debt service account, proceeds of each issue of bonds authorized under section 2 must be deposited in a separate account, debt service reserve, or other account designated by the commissioner. Money in the account is appropriated to the commissioner. The commissioner or the owner of the facilities described in section 2 may withdraw proceeds of bonds for application to the appropriated purposes in the manner provided by order of the commissioner or in any indenture authorized by order of the commissioner. The commissioner may establish whatever accounts might be necessary to carry out the purposes of sections 1 to 14. All deposits into and disbursements from accounts for the purposes and from the sources of revenue authorized by sections 1 to 14 and provided in an order of the commissioner or an indenture or other agreement authorized by the commissioner are appropriated for that purpose.

Subd. 2. **ACCOUNTS.** The state treasurer or any trustee appointed by the commissioner of finance under sections 1 to 14 shall maintain permanently on official books and records debt service accounts separate from all other funds and accounts, to record all receipts and disbursements of money for principal and interest payments on each series of bonds. No later than the due date of each principal and interest payment on the bonds, the commissioner shall withdraw from the proceeds of the bonds, or from revenues on hand and available for the purpose, and shall deposit in the debt service accounts the amount, if any, required to be deposited in the account by the order of the commissioner or any indenture authorized by an order of the commissioner. All amounts in any debt service account are appropriated for the payment of principal, premiums, and interest for the bonds to which the account relates.

Sec. 12. **POWERS AND DUTIES OF TRUSTEE.**

Subdivision 1. **GENERAL.** The trustee, if any, designated in any indenture or order securing an issue of bonds may, in the trustee's own name, if so provided in the indenture or order:

(1) enforce all rights of the bondholders, including the right to require the commissioner of finance to collect fees, charges, interest, and payments on leases, loans, or interests therein held by the commissioner and eligible securities purchased by it adequate to carry out any agreement as to, or pledge of, those fees, charges, and payments, and to require the commissioner to carry out any other agreements with the holders of the bonds and to perform the duties required under sections 1 to 14;

(2) bring suit upon the bonds;

(3) require the commissioner to account as if it were the trustee of any express trust for the holders of the bonds;

(4) enjoin any acts or things which may be unlawful or in violation of the rights of holders of the bonds; or

(5) upon a default as defined in any bond, order, or indenture, declare all the bonds due and payable, enforce any remedy available under law, and if all defaults are made good, the trustee may annul the declaration and consequences.

Subd. 2. **ADDITIONAL POWERS.** In addition to the powers in subdivision 1, the trustee has all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of bondholders in the enforcement and protection of their rights.

Subd. 3. **VENUE.** The venue of any action or proceedings brought by a trustee is in Ramsey county.

Sec. 13. **DEBT SERVICE RESERVE ACCOUNT.**

Subdivision 1. **AUTHORITY.** The commissioner of finance or a trustee appointed by the commissioner may create, maintain, and establish a special account or accounts for the security of one or more or all series of the bonds, which accounts are known as debt service reserve accounts. The commissioner may pay into each debt service reserve account:

(1) any money appropriated by the state only for the purposes of that account;

(2) any proceeds of sale of bonds to the extent provided in the order or indenture authorizing their issuance;

(3) any money directed to be transferred by the commissioner to that debt service reserve account; and

(4) any other money made available to the commissioner for the purpose of that account from any other source.

Subd. 2. **USE OF MONEY.** The money held in or credited to each debt service reserve account, except as provided in this section, must be used solely for the payment of the principal of bonds of the commissioner as the bonds mature or otherwise become due, the purchase of the bonds, the payment of interest on the bonds, the payment of any premium required when the bonds are redeemed before maturity, the payment of trustee or paying agency or registrar fees and expenses, the reimbursement of any advance made from another fund or account, or the payment of any rebate amounts owing to the United States government in accordance with any applicable covenant to comply with federal tax laws; provided, that money in a debt service reserve account may not be withdrawn at any time in an amount which would reduce the amount of the account to less than any amount which the commissioner determines to be reasonably necessary for the purposes of the account, except for the purpose of paying principal, premium, or interest due on bonds secured by the account, for the payment of which other money is not available.

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Subd. 3. **LIMITATION.** If the commissioner creates a debt service reserve account for the security of any series of bonds, the commissioner may not issue any additional bonds which are similarly secured if the amount of any of the debt service reserve accounts at the time of issuance does not equal or exceed the minimum amount, if any, required by the resolution creating that account, unless the commissioner deposits in each account at the time of issuance, from the proceeds of the bonds or otherwise, an amount which, together with the amount then in the account, will not be less than the minimum amount required.

Subd. 4. **EXCESS MONEY.** To the extent consistent with the orders and indentures securing outstanding bonds, the commissioner may, at the close of any fiscal year, transfer to any other account from any debt service reserve account, any excess in that account over the amount considered by the commissioner to be reasonably necessary for the purpose of the account.

Subd. 5. **CONSTRUCTION.** Nothing in this section may be construed to limit the right of the commissioner to create and establish by order or indenture other accounts or security in addition to debt service reserve accounts which are necessary or desirable in connection with any bonds.

Sec. 14. **CONSTRUCTION.**

Sections 1 to 14 are necessary for the welfare of the state of Minnesota and its inhabitants; therefore, they shall be liberally construed to effect their purpose.

Sec. 15. **DETROIT LAKES; FACILITIES.**

The commissioner of trade and economic development may assist the people of the city of Detroit Lakes to make economic use of agricultural-industrial facilities in the city. The commissioner may use all authority under existing law for this purpose. The commissioner may employ marketing analysts and other consultants as necessary.

Presented to the governor April 17, 1992

Signed by the governor April 29, 1992, 8:05 a.m.

CHAPTER 544—H.F.No. 2717

An act relating to water; requiring maintenance of a statewide nitrate data base; establishing a nitrate data advisory task force; modifying requirements relating to well disclosure certificates and sealing of wells; establishing a well sealing account; requiring a report on environmental consulting services; grant a waiver for water well requirements to dairy farmers; allowing an extension for well construction compliance; appropriating money; amending Minnesota Statutes 1990, sections 32.394, by adding subdivisions; 103I.115; 103I.301, subdi-