

CHAPTER 7380
PUBLIC FACILITIES AUTHORITY
LOAN PROGRAMS

	GENERAL ADMINISTRATION		
7380.0100	DEFINITIONS.	7380.0296	PENALTY FOR NONCOMPLIANCE WITH LOAN CONDITIONS.
7380.0110	REGULAR MEETINGS.	7380.0297	REPORTS, DISCLOSURE, AND AUDITS.
7380.0120	SPECIAL MEETINGS.		
7380.0130	AGENDA.		
	DRINKING WATER REVOLVING FUND		WATER POLLUTION CONTROL REVOLVING FUND
7380.0245	PURPOSE.	7380.0400	PURPOSE.
7380.0250	DEFINITIONS.	7380.0410	DEFINITIONS.
7380.0255	INTENDED USE PLAN.	7380.0420	PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.
7380.0260	APPLICATIONS.	7380.0430	AUTHORITY EVALUATION PROCEDURE.
7380.0265	LOAN TERMS AND CONDITIONS.	7380.0440	INTEREST RATE DETERMINATIONS.
7380.0270	INTEREST RATE DETERMINATIONS FOR BORROWERS PROVIDING GENERAL OBLIGATION OR REVENUE BONDS.	7380.0450	OTHER FINANCIAL ASSISTANCE.
		7380.0460	FEES.
7380.0275	INTEREST RATE DETERMINATIONS FOR BORROWERS NOT PROVIDING GENERAL OBLIGATION OR REVENUE BONDS.	7380.0470	RELEASE OF FUNDS.
		7380.0480	REPORTS AND AUDITS.
7380.0280	SUPPLEMENTAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.		TRANSPORTATION REVOLVING LOAN FUND
		7380.0705	PURPOSE.
7380.0285	OTHER FINANCIAL ASSISTANCE.	7380.0715	DEFINITIONS.
7380.0290	FEES	7380.0725	APPLICATIONS.
7380.0295	RELEASE OF FUNDS.	7380.0735	LOAN CONDITIONS.
		7380.0745	INTEREST RATE DETERMINATIONS.
		7380.0755	OTHER FINANCIAL ASSISTANCE.
		7380.0765	RELEASE OF FUNDS
		7380.0775	REPORTS, DISCLOSURE, AND AUDITS.

GENERAL ADMINISTRATION

7380.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 7380.0100 to 7380.0130.

Subp. 2. **Meetings.** Regular meetings and special meetings of the authority, and notice of such meetings, shall be as provided in the Minnesota Open Meeting Law, Minnesota Statutes, section 471.705.

Subp. 3. **Statute.** "Statute" means Minnesota Statutes, section 471.705, cited as the Minnesota Open Meeting Law.

Statutory Authority: *MS s 446A.06 subd 2*

History: *13 SR 1822*

7380.0110 REGULAR MEETINGS.

Regular meetings of the authority are held as provided in the notice of meeting schedule issued by the authority and on file at the office of the authority at 500 Metro Square, 121 7th Place East, Saint Paul, Minnesota 55101-2146. If the authority decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it shall do so as provided by Minnesota Statutes, section 471.705, subdivision 1c.

Statutory Authority: *MS s 446A.06 subd 2*

History: *13 SR 1822*

7380.0120 SPECIAL MEETINGS.

Special meetings of the authority may be called by the chair or by a majority of the members of the authority, provided the notice is given as required by statute. The purpose of the meeting shall be only as provided in the notice, and shall be held at the office of the authority in Saint Paul, Minnesota, unless another place of meeting is designated by resolution.

Statutory Authority: *MS s 446A.06 subd 2*

History: *13 SR 1822*

7380.0130 AGENDA.

A proposed agenda of business to be conducted at any regular or special meeting of the authority must be included with the notice of meeting to all members of the authority. Any citizen, group, or organization that has requested to be included on the Public Facilities Authority mailing list shall receive an agenda. The mailing list will be updated every two years. Any member of the authority who wishes to add an item on the agenda of a regular meeting may do so with the concurrence of the majority of the members.

Statutory Authority: *MS s 446A.06 subd 2*

History: *13 SR 1822*

7380.0200 [Repealed, L 2004 c 206 s 53; L 2004 c 228 art 1 s 76]

7380.0210 [Repealed, L 2004 c 206 s 53; L 2004 c 228 art 1 s 76]

7380.0220 [Repealed, L 2004 c 206 s 53; L 2004 c 228 art 1 s 76]

7380.0230 [Repealed, L 2004 c 206 s 53; L 2004 c 228 art 1 s 76]

7380.0240 [Repealed, L 2004 c 206 s 53; L 2004 c 228 art 1 s 76]

DRINKING WATER REVOLVING FUND**7380.0245 PURPOSE.**

The drinking water revolving fund provides loans and other forms of financial assistance to eligible public drinking water suppliers for the planning, design, and construction of facilities to ensure safe and adequate drinking water. Under the provisions of the federal Safe Drinking Water Act and Minnesota Statutes, section 446A.081, the Minnesota Public Facilities Authority receives capitalization grants from the United States Environmental Protection Agency and manages the fund, including making loans to eligible borrowers and receiving loan repayments. The authority also raises funds for loans through the sale of revenue bonds. Parts 7380.0245 to 7380.0297 provide for the authority's administration of its responsibilities under Minnesota Statutes, section 446A.081. The Minnesota Department of Health also has administrative responsibilities under Minnesota Statutes, section 446A.081, including determining project priorities and approving projects prior to the award of financial assistance by the authority. Parts 4720.9000 to 4720.9080 provide for the administration of the Minnesota Department of Health's responsibilities.

Statutory Authority: *MS s 446A.081*

History: *22 SR 397*

7380.0250 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part, the federal Safe Drinking Water Act, and Minnesota Statutes, section 446A.081, apply to parts 7380.0245 to 7380.0297.

Subp. 2. **Act.** "Act" means the Public Health Service Act, United States Code, title 42, sections 300f et seq., Public Law 104-184, title XIV, section 1452, Part E.

Subp. 3. **Applicant.** "Applicant" means any county, city, town, township, regional entity, or other governmental entity, or such other entity as provided in part 4720.9010, which is responsible for providing public drinking water, and which intends to apply or has applied to the authority for financial assistance from the fund. If an entity responsible for providing public drinking water is not empowered to issue a general obligation bond to the authority and another governmental entity agrees to issue a general obligation note on behalf of the drinking water supplier, applicant refers to both entities. All data used in these circumstances to determine the interest rate of a loan under part 7380.0270 shall be based on the entity responsible for providing public drinking water.

Subp. 4. **Application.** “Application” means the documents submitted to the executive director of the authority by the applicant which contains information and data in support of the applicant’s loan request to the authority. The application includes the completed application forms provided by the authority; a municipal profile and current annual budget, or financial forecasts, as applicable; and financial audits for the last three years. Application materials submitted by a private provider of a public drinking water system may be private data as provided in part 7380.0260.

Subp. 5. **Authority.** “Authority” means the Minnesota Public Facilities Authority created in Minnesota Statutes, chapter 446A.

Subp. 6. **Basis point.** “Basis point” means the shorthand reference to 1/100 (0.01) of one percent.

Subp. 7. **Borrower.** “Borrower” means any county, home rule charter or statutory city, town, township, regional entity, or other governmental entity, or other entity as provided in part 4720.9010, which is responsible for providing public drinking water, and which will enter into or has entered into a loan agreement with the authority. If an entity responsible for providing public drinking water is not empowered to issue a general obligation bond to the authority and another governmental entity agrees to issue a general obligation note on behalf of the drinking water supplier, borrower refers to both entities. All data used in these circumstances to determine the interest rate of a loan under part 7380.0270 shall be based on the entity responsible for providing public drinking water.

Subp. 8. **CD.** “CD” means certificate of deposit.

Subp. 9. **Debt service account.** “Debt service account” means a separate booking account established and maintained in a borrower’s official financial records to account for the accumulation of resources for, and the payment of, the general obligation bond issued by a borrower and purchased by the authority to effect the loan transaction for the financing of the borrower’s drinking water supply project.

Subp. 10. **Dedicated sources of revenue.** “Dedicated sources of revenue” means one or more dedicated sources of revenue pledged by a borrower issuing a general obligation or revenue bond to the authority to service debt incurred from the fund as required by the act and Minnesota Statutes, section 446A.081, subdivision 8, paragraph (d).

Subp. 11. **Department.** “Department” means the Department of Health.

Subp. 12. **Eligible costs.** “Eligible costs” means the project costs that may be financed by the authority, pursuant to the act and parts 7380.0245 to 7380.0297, provided that the project costs are reasonable and necessary, and, subject to applicable law, provisions of the capitalization grant, and the authority’s basic bond resolution and series bond resolution, may include the following:

- A. acquisition costs of land, as permitted under the act;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. cost of equipment and machinery;
- F. bond issuance costs;
- G. underwriting, financial advisor, or placement fees;
- H. trustee or paying agent fees;
- I. fees of guarantor, insurer, or financial institution, which provide letters of credit, surety bonds, or equivalent security;
- J. authority fees, including application and guaranty of the authority;
- K. certain contingency costs up to the amount permitted by the act;
- L. interest costs during construction; and
- M. legal fees, including those of the authority.

Subp. 13. **Emergency project.** “Emergency project” means a project so designated by the commissioner of the department as provided in part 4720.9055.

Subp. 14. **Executive director.** “Executive director” means the executive director of the authority.

Subp. 15. **Financial capability.**

A. “Financial capability” for a municipal borrower means the capability of the municipality to retire debt incurred from the fund, as measured by its current fiscal and socioeconomic data as determined through such measures as population trends, median household income, per capita debt load, user fee impact, composition of municipal long-term debt, debt service coverage ratio, planned capital improvements, and liquidity, as well as a review of the municipality’s last three years’ annual audits.

B. “Financial capability” for a private borrower means the capability of the private borrower to retire debt incurred from the fund, as determined by such measures as income and earnings forecasts, financial forecasts, credit reports, net worth calculations, and other related documents that demonstrate that the borrower has sufficient revenues to repay the loan.

Subp. 16. **Financial institution.** “Financial institution” means an investment or banking institution, a savings and loan, an insurance company, an investment company, or a public entity authorized to make loans.

Subp. 17. **Fund.** “Fund” means the drinking water revolving fund as provided in Minnesota Statutes, section 446A.081, subdivision 2.

Subp. 18. **General obligation bond or general obligation note.** “General obligation bond” or “general obligation note” means bonds or notes which are secured by the full faith and credit of a borrower as provided in Minnesota Statutes, chapters 116A and 475.

Subp. 19. **Interest.** “Interest” means the interest charged on the loan principal plus any servicing fees as provided in Minnesota Statutes, section 446A.04, subdivision 5.

Subp. 20. **Linked deposit loan.** “Linked deposit loan” means a loan made under contract by the authority with a financial institution authorized to issue CDs, where the authority invests funds in a CD up to an amount equal to the amount of the loan. The CD is intended to be a source of funds for the loan and may not be pledged as security on the loan.

Subp. 21. **Loan agreement.** “Loan agreement” means the financing agreement between the borrower, the financial institution, if utilized for a project, and the authority, which along with the general obligation bond, revenue bond, or promissory note and security agreement, as applicable, provides the terms and conditions of the loan.

Subp. 22. **Municipal bond index.** “Municipal bond index” means the index compiled by Merrill Lynch and Co. which is represented as being based on the yield that about 500 major issuers, mainly of investment grade, would pay on new long-term (20 years) general obligation, tax-exempt bonds. The index is published weekly in the Wall Street Journal. If this index is discontinued, the authority shall select a similar alternative index.

Subp. 23. **Official statement.** “Official statement” means the legal document prepared by the authority which summarizes all the salient features of the underlying documents and agreements which support the bond offerings of the authority. It is considered a disclosure document which presents information that is material to the offering, and contains what a reasonable investor would need to know in making a decision about investing in the issue. The document sets forth the pertinent facts concerning the issuer, the issuer’s financial condition, the security pledged for the bonds being offered, the projected use of the proceeds of the bond sale, and, in the case of the authority, pertinent facts about the authority’s borrowers.

Subp. 24. **Participation loan.** "Participation loan" means a loan made under contract with a financial institution in which the authority purchases up to a 50 percent share of a financial institution's loan to an eligible borrower.

Subp. 25. **Poverty level.** "Poverty level" means the number of persons in poverty within a municipality, expressed as a percentage, identified as the poverty level of a municipality by the United State Census Bureau, or by another federal or state agency, or by an accredited independent survey, which most accurately measures the level of poverty within a municipality.

Subp. 26. **Project completion.** "Project completion" means the date on which the operation of the project's major components will be initiated or will be capable of being initiated.

Subp. 27. **Quarterly set rate.** "Quarterly set rate" means the maximum rate of interest in a given quarter on a 20-year loan to a borrower providing a general obligation or revenue bond to the authority, using as guidance the average of the municipal bond index for the four weeks prior to the beginning of the quarter minus 50 basis points. For loans less than 20 years, an additional five basis points shall be deducted for each year less than 20 years.

Subp. 28. **Revenue bond.** "Revenue bond" means a bond payable from specified sources of revenue and to which the full faith and credit of the issuing entity is not pledged, issued by a city of the first class which cannot issue a general obligation bond or note to finance its water supply system without first obtaining the approval of the electors at a referendum.

Subp. 29. **Significant water user.** "Significant water user" means a nonresidential user of an applicant's water supply system whose current water needs or projected water needs cause the need for construction of the drinking water project, and whose water intake after the project is completed will be greater than or equal to 50 percent of the total gallons annually supplied by the water supply system.

Subp. 30. **True interest cost.** "True interest cost" means the weighted rate of interest on an authority series bond issue as determined at the time of bid opening and award of the issue to an underwriter.

Subp. 31. **Water service area.** "Water service area" means the area serviced by a borrower's drinking water project.

Subp. 32. **Water service charge.** "Water service charge" means the total charges levied upon the residential and nonresidential users of a borrower's water supply system for the purposes of operating and maintaining the system and paying debt service costs. Water service charges may include tax assessments, special assessments, user charges, user fees, or other charges for the use of the borrower's water supply system identified by any other name.

Subp. 33. **Water supply system.** "Water supply system" means the collective term to denote all of the property involved in the operation of a borrower's water system, including, but not limited to, the source of the water supply, treatment facilities, water storage, water lines, valves, meters, and general property.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0255 INTENDED USE PLAN.

Subpart 1. **Adoption of intended use plan.** The authority shall, after providing for public notice and comment, annually adopt an intended use plan which describes the intended uses of the amounts in the fund in a particular fiscal year. The intended use plan shall identify:

- A. the projects meeting the eligibility requirements in subpart 2 which are expected to be funded in the fiscal year;
- B. the other eligible activities to be funded as provided in the act, and the amounts to be set aside for each; and

C. the amount to be reserved for emergency projects.

Subp. 2. **Eligibility.** To be eligible for placement on the intended use plan:

A. the project must be listed on the project priority list maintained by the department as provided in part 4720.9015; and

B. the applicant must submit a written request to the authority for placement on the intended use plan that includes:

(1) a brief description of the project for which financial assistance is sought;

(2) an updated project cost estimate and the requested loan amount;

(3) a project schedule indicating that the project will proceed in the fiscal year for which the intended use plan is being prepared; and

(4) an estimate of the monthly drawdown of the loan proceeds.

Subp. 3. **Priority order.** Projects shall be listed on the intended use plan in order of their priority on the project priority list maintained by the department as provided in part 4720.9015. If the total requested loan amount from applicants meeting the eligibility requirements in subpart 2 exceeds the amount expected to be available for loans, all eligible projects shall be listed on the intended use plan and the intended use plan shall identify the projects that are expected to be funded, beginning with the highest priority projects.

Subp. 4. **Bypass procedure.** If an applicant whose project is identified to receive funding on the intended use plan fails to meet the timing requirements in part 7380.0260, subpart 1, the project shall be bypassed and the loan amount designated for that project shall be offered to the remaining projects on the intended use plan, in priority order, that were not previously identified to receive funding.

Subp. 5. **Amendments to intended use plan.** The authority shall amend the intended use plan to add additional eligible projects to the extent sufficient funds are available.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0260 APPLICATIONS.

Subpart 1. **Timing.** Applicants whose projects are identified to receive funding on the intended use plan described in part 7380.0255 must submit the items specified in items A and B within six months after the date the authority adopts the intended use plan or an amendment to the intended use plan. If the applicant fails to submit these items by the required date, the applicant's project will be subject to the bypass procedure as provided in part 7380.0255, subpart 4. The applicant must:

A. submit an application for financial assistance to the authority; and

B. for construction projects, submit plans and specifications to the department as provided in part 4720.9045.

Subp. 2. **Financial information.** Financial information submitted by an applicant in support of a loan application to the authority, which may include credit reports, financial statements, and net worth calculations, is private data with regard to data on individuals as defined in Minnesota Statutes, section 13.02, subdivision 12, and nonpublic data as defined in Minnesota Statutes, section 13.02, subdivision 9.

Subp. 3. **Municipal profile.** An applicant must submit a municipal profile that contains basic applicant data and information. The profile shall include, at a minimum, population trends, major employers, building permits, largest taxpayers, trends of estimated market values, property tax rates, property tax collection, net tax capacity, indebtedness, budget forecasts, project capital expenditures, educational and health care facilities, and other information deemed necessary by the authority or its rating agencies in order to make an informed determination on the creditworthiness of the applicant. The borrower shall authorize the use of the municipal profile in any official

statements of the authority relating to its issuance of bonds and attest that the municipal profile does not contain an untrue statement of material fact, and to notify the authority if the borrower becomes aware of any changes which cause the information in the municipal profile to contain an untrue fact or omit a material fact.

Subp. 4. **Complete applications.** An application is considered complete when the applicant has provided the required forms, and the data, exhibits, and documentation which have been submitted are sufficient for the authority to make an informed determination that:

- A. the financing of the project is fully assured;
- B. the applicant has the financial capability to repay the loan; and
- C. adequate collateral is being provided by the applicant to secure the loan to the extent required by the authority.

Subp. 5. **Incomplete applications.** If an application is received that does not meet the requirements of subpart 4, the application shall be considered incomplete and the applicant shall be asked to provide the required data or information. Should the applicant not respond to the request, the executive director shall notify the applicant in writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the executive director's notification to complete the application. If the application is not completed and received by the executive director within 60 days, the application shall be rejected, and the applicant, subject to the authority and department rules, must reapply to be further considered.

Subp. 6. **Evaluation of certified applications.** The executive director and staff shall evaluate applications for projects certified by the department to determine the applicant's capacity to comply with the act, Minnesota Statutes, section 446A.081, parts 7380.0245 to 7380.0297, the loan agreement, and the covenants of the general obligation bond, revenue bond, or promissory note and security agreement that will be issued by the applicant to the authority. When the department's certification of an applicant's project and the as-bid costs have been received, the staff shall provide a signed recommendation to the authority, approved and countersigned by the executive director, recommending whether the loan should be approved, approved with special conditions, or rejected.

Subp. 7. **Rejection of an application.** The authority shall reject an application for financial assistance for one or more of the following reasons:

- A. failure of the project to receive certification by the department under part 4720.9060;
- B. failure of the applicant to submit a complete application as provided in subpart 4;
- C. failure of the applicant to develop dedicated sources of revenue sufficient to ensure repayment of the loan and adequate operation and maintenance of the facility;
- D. failure of the applicant to demonstrate that it has the technical, managerial, and financial capability to construct the facility and adequately operate and maintain the water supply system for the term of the loan;
- E. failure of the applicant to adequately collateralize the loan; or
- F. failure of the applicant to demonstrate its capacity to comply with the act, Minnesota Statutes, section 446A.081, parts 7380.0245 to 7380.0297, the loan agreement, and the covenants of the general obligation bond, revenue bond, or promissory note and security agreement that will be issued by the applicant to the authority.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0265 LOAN TERMS AND CONDITIONS.

Subpart 1. **In general.** The authority shall provide loans or other financial assistance for eligible costs of projects listed on the intended use plan, or for

emergency projects designated by the commissioner of the department, which are not rejected for any of the reasons listed in part 7380.0260, subpart 7. The terms and conditions for loans or other financial assistance provided by the authority to borrowers for certified projects are as provided by the act, Minnesota Statutes, section 446A.081, subdivision 8, parts 7380.0245 to 7380.0297, the capitalization grant, the authority's basic bond resolution and series bond resolution, the loan agreement, and the general obligation bond, revenue bond, or promissory note and security agreement issued by the borrower to the authority for the project financing. Borrowers shall also comply with chapter 4720.

Subp. 2. Borrowers providing general obligation or revenue bonds. A borrower providing a general obligation or revenue bond to the authority must use a nationally recognized bond counsel identified as such and included in The Bond Buyer's Municipal Marketplace Directory to prepare the bonds and other related documentation and render an opinion to the authority. Items A to F apply to borrowers providing general obligation or revenue bonds to the authority.

A. The term of the loan shall not exceed 20 years.

B. The borrower shall designate and maintain dedicated sources of revenue sufficient to fully amortize the loan and to fully provide for the operation and maintenance of the drinking water system.

C. The borrower shall establish and maintain a debt service account and an operation and maintenance account in amounts to achieve the purposes in items A and B.

D. The borrower shall maintain the technical, managerial, and financial capability to adequately operate and maintain the water supply system for the full term of the loan.

E. The borrower shall begin making principal and interest payments on the loan no later than one year after approval of the loan or one year after project completion as estimated in the application, whichever is earlier. Subsequent principal and interest payments must be made in the amounts and at the times given in the loan agreement. In no case shall payments be less frequent than annual principal and interest payments sufficient to amortize the debt within the term of the loan.

F. If the project involves a significant water user, the borrower must enter into an agreement with the significant water supply user which ensures that the borrower and the authority are adequately protected in the event the significant water supply user curtails or ceases its operations.

Subp. 3. Borrowers not providing general obligation or revenue bonds. The authority shall provide financial assistance, up to a maximum of \$250,000, to a borrower not providing a general obligation or revenue bond by utilizing either a linked deposit loan or participation loan, as determined by the authority. The terms and conditions in items A to E apply to linked deposit loans and participation loans.

A. The maximum term of the loan shall first be determined by determining the useful life of the property being acquired with the loan proceeds. The term of the loan shall not exceed the following limits:

(1) 12 years for land, buildings, or other real property;

(2) the lesser of 80 percent of the useful life or seven years for equipment or machinery; or

(3) a weighted average of the limits provided in subitems (1) and (2) for loans that are a combination of real property and equipment or machinery.

B. Principal and interest payments are due in accordance with the loan agreement and the promissory note.

C. The borrower shall maintain the technical, managerial, and financial capability to adequately operate and maintain the water supply system for the full term of the loan.

D. For linked deposit loans, the authority's CD shall be insured by the Federal Deposit Insurance Corporation or secured as provided in Minnesota Statutes, section 118A.03, subdivision 3. The CD term and amount shall be equal to the term and amount of the borrower's loan.

E. For participation loans, the financial institution and the authority shall take a security interest in capital assets or real property of the borrower to collateralize the loan.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0270 INTEREST RATE DETERMINATIONS FOR BORROWERS PROVIDING GENERAL OBLIGATION OR REVENUE BONDS.

Subpart 1. In general.

A. The interest rate charged a borrower providing a general obligation or revenue bond to the authority for the full amount of the loan shall be based on the quarterly set rate in effect when the application is received and the cumulative interest rate reductions provided in this part, except as provided in subparts 5 and 6. In no case shall the rate of interest on a loan to a borrower be discounted to less than one percent.

B. In order to effect the purposes and carry out the responsibilities of the authority as provided in Minnesota Statutes, section 446A.081, subdivision 2, and in accordance with the powers vested in the authority in Minnesota Statutes, section 446A.04, subdivision 7, the authority may, by resolution, reset the criteria and the means by which it determines terms, conditions, and interest rates on loans to borrowers, and shall effect the changes after providing public notice.

C. The authority shall suspend offering loans with interest rates based on the quarterly set rate if it determines that market conditions impacting the municipal bond index are:

(1) not representative of current market conditions; or

(2) such that continued use of the index would be detrimental to the viability of the fund.

At the time of that determination, the authority shall by resolution adopt a revised rate for a period of time determined by the authority. The authority shall, based on market conditions, extend the offering of loans at the revised rate and continue to do so until the time the authority considers it prudent to again use the municipal bond index as guidance for the set rate.

D. The data used to determine the population, median household income, and poverty level of the borrower shall be that which most accurately measures the current population, median household income, and poverty level of the borrower's water service area. If there is reason to believe that the United States Census data or the data from the state demographer is not a currently accurate representation of the median household income, poverty level, or population of the borrower's water service area, the borrower may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income, poverty level, or population of the borrower's water service area. The information must consist of reliable data from local, regional, state, or federal sources, or from a survey conducted by a reliable impartial source. If the authority determines that the demographic data submitted by the borrower does not reflect the most current or accurate measure of the population, median household income, and poverty level of the borrower's water service area, the authority shall update the demographic data to reflect the most current and accurate figures.

Subp. 2. Population discounts. A borrower shall receive interest rate discounts based on its population according to items A to D.

A. A borrower with a population of 25,000 or less and larger than 5,000 shall receive a 25 basis point discount.

B. A borrower with a population of 5,000 or less and larger than 2,500 shall receive a 50 basis point discount.

C. A borrower with a population of 2,500 or less and larger than 1,000 shall receive a 75 basis point discount.

D. A borrower with a population of 1,000 or less shall receive a 100 basis point discount.

Subp. 3. Median household income and poverty level discounts. A borrower shall receive interest rate discounts based on its median household income and poverty level as follows:

A. if the median household income level of the borrower is below the median household income level for the metropolitan or nonmetropolitan area, as applicable, based on the most recent census, the borrower shall receive a 50 basis point discount; or

B. if the poverty level of the borrower is at or above the national average, the borrower shall receive a 100 basis point discount.

Subp. 4. Water service charge discounts. A borrower shall receive interest rate discounts based on its estimated average annual residential water service charges after completion of the project as follows:

A. if the estimated average annual residential water service charge is at or exceeds one percent of the median household income level of the borrower, the borrower shall receive a 50 basis point reduction in the interest rate;

B. if the estimated average annual residential water service charge is at or exceeds 1-1/2 percent of the borrower's median household income, the borrower shall receive a 100 basis point reduction in the interest rate; or

C. if the estimated average annual residential water service charge is at or exceeds two percent of the borrower's median household income, the borrower shall receive a 150 basis point reduction in the interest rate.

Subp. 5. Loans funded through sale of authority bonds. Items A to C apply to loans funded through the sale of authority bonds.

A. Borrowers whose projects are funded through the sale of authority bonds shall have the option, except as provided in items B and C and subpart 6, of selecting an interest rate determined according to subparts 1 to 4, or selecting an interest rate determined by a specific basis point reduction from the true interest cost of the bonds sold by the authority. The authority shall annually provide by resolution the specific basis point reduction it will allow. Borrowers selecting this option must also comply with the following conditions:

(1) the payment schedule of the loan must follow the payment schedule of the bonds sold by the authority;

(2) an acceptable agreement on fund accountability must be reached;

(3) the borrower must demonstrate its creditworthiness; and

(4) the integrity of the fund must be maintained.

B. The authority shall have the option to fund projects in excess of \$5,000,000 through the sale of authority bonds and to set the interest rate based on the specific basis point reduction from the true interest cost of the authority's bonds provided by resolution as described in item A.

C. If the authority funds a loan through the sale of bonds to a borrower providing a revenue bond to the authority, the interest rate shall be based on the specific basis point reduction from the true interest cost of the authority's bonds provided by resolution as described in item A.

Subp. 6. Loans for projects involving significant water users. If a borrower's project involves a significant water user, the interest rate on the loan or portion of the

loan for the project costs directly attributable to the significant water user shall be the same as for United States treasury bills, notes, or bonds of a comparable maturity.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0275 INTEREST RATE DETERMINATIONS FOR BORROWERS NOT PROVIDING GENERAL OBLIGATION OR REVENUE BONDS.

Subpart 1. **In general.** The authority shall set the interest rate for a borrower not providing a general obligation or revenue bond to the authority, and utilizing a linked deposit or participation loan, as provided in this part.

Subp. 2. **Linked deposit loans.** The interest rate on a CD purchased by the authority to effect a linked deposit loan shall be at the rate of the financial institution's interest rate on a CD equal to the term of the loan being made, minus 200 basis points. The interest rate to the borrower on the linked deposit loan made by the financial institution shall be discounted by 200 basis points from the lending rate that the borrower would have been entitled to under normal circumstances. The borrower shall not be entitled to any other interest rate discounts pursuant to part 7380.0270.

Subp. 3. **Participation loans.** The interest rate on the authority's portion of a participation loan shall be at the rate of a United States government treasury security of a comparable maturity to the term of the loan being made, minus 100 basis points. The interest rate to a borrower on the total amount of a participation loan shall be a blended rate of the financial institution's rate and the authority's rate in proportion to the respective rates of participation. The borrower shall not be entitled to any other interest rate discounts pursuant to part 7380.0270.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0280 SUPPLEMENTAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.

Subpart 1. **In general.** The authority shall provide supplemental assistance, in the form of a reduction in the amount of loan principal which a borrower has to repay, to public water supply systems owned by a governmental or intergovernmental agency, a nonprofit organization, an Indian tribe, or any combination of them that meet the criteria in subpart 2. The total amount of supplemental assistance provided in any one year shall not exceed ten percent of the federal capitalization grant for that year or \$2,000,000, whichever is less.

Subp. 2. **Disadvantaged community criteria.** A borrower is eligible for supplemental assistance as described in subpart 1 if:

A. the borrower's project receives public health priority points on the department's project priority list under part 4720.9020;

B. after completion of the proposed project, the borrower will have an estimated average annual residential water service charge of 1.4 percent of median household income or more; and

C. the borrower has also applied to all other federal and state financial assistance programs for which it is eligible.

Subp. 3. **Amount of supplemental assistance.** The supplemental assistance amount shall be equal to 80 percent of the amount needed to reduce the estimated average annual residential water service charge to 1.4 percent of median household income. If the current average annual residential water service charge is at or exceeds 1.4 percent of median household income, the supplemental assistance amount shall be 80 percent of the project cost. The supplemental assistance amount provided to a single borrower shall not exceed \$500,000.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0285 OTHER FINANCIAL ASSISTANCE.

In addition to the loans provided in parts 7380.0265 to 7380.0275 and the supplemental assistance provided in part 7380.0280, the authority may provide other forms of financial assistance as provided in the act and in Minnesota Statutes, section 446A.081, subdivision 9. The executive director shall determine when other forms of financial assistance are appropriate based on existing financial conditions, the impact on the drinking water revolving fund, the financial capacity of the borrower, and the advantages to the borrower in using one form of financing as opposed to another form.

Statutory Authority: *MS s 446A.081*

History: *22 SR 397*

7380.0290 FEES.

If the authority charges fees, they must be as provided in Minnesota Statutes, section 446A.04, subdivision 5, paragraph (a).

Statutory Authority: *MS s 446A.081*

History: *22 SR 397*

7380.0295 RELEASE OF FUNDS.

Subpart 1. **In general.** Subject to the availability of funds, disbursements to the borrower shall be made in accordance with applicable state and federal law governing the disbursements. In addition, no disbursements shall be made to a borrower until and unless the authority has determined the total estimated cost of the project and ascertained that the financing of the project is assured by:

A. a loan authorized by state law or appropriation of bonds or other money of the borrower to a fund for the construction of the project; and

B. an irrevocable undertaking, by resolution of the borrower, to use all the money made available for the project exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the estimate by the appropriation to the construction fund of additional money or proceeds of additional bonds to be issued by the borrower.

Subp. 2. **Adverse change.** The authority shall not release funds to a borrower for an approved project if there has been a material negative change in the financial condition of the borrower, as reasonably determined by the authority, since the day of the completion of the application. The authority reserves the right to suspend or terminate funding to a borrower if the authority determines that there has been such a change.

Subp. 3. **Withholding, disallowance, or termination of disbursements.**

A. The authority shall withhold or disallow either total or partial disbursements if:

(1) the commissioner of the department requests disbursements be withheld or disallowed as provided in part 4720.9075; or

(2) the borrower fails to comply with the requirements of the act, Minnesota Statutes, section 446A.081, parts 7380.0245 to 7380.0297, the loan agreement, or the bonds or promissory note and security agreement issued by the borrower to the authority.

B. If the authority withholds or disallows disbursements under item A, the executive director shall give a borrower written notice of the reasons and the time in which the borrower must demonstrate that the condition has or will be corrected. If the condition has not been corrected in the specified time period, withheld disbursements may be terminated. Termination of disbursements means that the amount of the loan available to the borrower is reduced by the amount so terminated.

Statutory Authority: *MS s 446A.081*

History: *22 SR 397*

7380.0296 PENALTY FOR NONCOMPLIANCE WITH LOAN CONDITIONS.

If a borrower has failed to fully comply with the loan conditions provided in parts 7380.0245 to 7380.0297, the executive director shall notify the borrower in writing of the authority's determination. The borrower has three months from the date of notification to return to compliance or provide a written plan, acceptable to the authority, for returning to compliance. Upon submission of a plan by the borrower, the authority shall either accept or reject the plan. If an accepted plan has a longer time period for returning to compliance, the time period for compliance shall be the period specified in the accepted plan. If after three months the borrower fails to return to compliance or provide an acceptable plan, or fails to return to compliance within the time period specified in an accepted plan, the interest rate on the unpaid loan principal shall increase from and after the date of required compliance to the quarterly set rate in effect when the borrower's loan application was received, with no further discounts as provided in part 7380.0270. If the borrower subsequently returns to compliance, the borrower may request the authority to reinstate the original interest rate. If the authority determines, upon written request of the borrower, that the borrower has returned to compliance, the interest rate on the unpaid loan principal shall revert back to the original interest rate as of the date of the determination by the authority.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0297 REPORTS, DISCLOSURE, AND AUDITS.

Subpart 1. **Reports.** During the term of the loan, the borrower shall make written reports to the authority on forms provided by the authority and on a schedule determined by the executive director.

Subp. 2. **Disclosure.** During the term of the loan, the borrower is required on its own volition to disclose to the authority any material information or events impacting the creditworthiness of the borrower, including, but not limited to, those requirements contained in Code of Federal Regulations, title 17, section 240.15c2-12 adopted by the United States Securities and Exchange Commission. If and when required by the rule, the borrower shall enter into a continuing disclosure document in a form provided by the authority.

Subp. 3. **Audits.** During the term of the loan, the borrower must provide annual independent audits acceptable to the authority. Additionally, a borrower must provide an annual independent audit performed in compliance with the requirements of the federal Office of Management and Budget, circular A-133, published in the Federal Register, volume 61, number 215, on November 5, 1996, and in compliance with the Single Audit Act Amendment of 1996, United States Code, title 31, sections 7501 to 7507. A borrower providing a general obligation or revenue bond to the authority must provide such audits for those years in which the authority disburses \$300,000 or more to the borrower.

Statutory Authority: *MS s 446A.081*

History: 22 SR 397

7380.0300 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0310 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0320 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0330 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0340 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0350 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0360 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0370 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

7380.0380 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

WATER POLLUTION CONTROL REVOLVING FUND

7380.0400 PURPOSE.

The Water Pollution Control Revolving Fund administered by the Minnesota Public Facilities Authority provides loans and other forms of financial assistance for the planning, designing, and construction of municipal wastewater treatment systems to assure maintenance of progress toward municipal compliance, or implementation of nonpoint source management controls, as required by the Federal Water Pollution Control Act, to municipalities for projects that have been certified by the Minnesota Pollution Control Agency. The United States Environmental Protection Agency provides a capitalization grant to the state of Minnesota to provide loans through the authority to ensure that the Revolving Fund is available to finance water pollution control projects in perpetuity. The terms and conditions of the loan agreement for financial assistance provided by the authority must be in conformance with the Federal Water Pollution Control Act, United States Code, title 33, particularly sections 1381 to 1387, the rules of the agency, and this part.

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614*

7380.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part, in Minnesota Statutes, section 446A.02, and in the Federal Water Pollution Control Act, apply to parts 7380.0400 to 7380.0480.

Subp. 2. **Act.** "Act" means the Federal Water Pollution Control Act, United States Code, title 33, sections 1251 to 1387.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Applicant.** "Applicant" means:

A. a governmental unit as defined in Minnesota Statutes, section 446A.02, subdivision 5; or

B. a municipality as defined in this part.

Subp. 5. **Average coupon rate.** "Average coupon rate" means the weighted average of bonds at the various maturity dates as provided in the bond.

Subp. 6. **Dedicated sources of revenue for repayment.** "Dedicated sources of revenue for repayment" means one or more dedicated sources of revenue established by the municipality to ensure repayment of the loan to the authority. Dedicated sources of revenue may be: special assessments; general taxes or general obligation bonds; sewer service charges; or other revenue sources acceptable to the authority.

Subp. 7. **Allowable costs.** Allowable costs that may be financed by the authority, provided the allowable cost item is reasonable, necessary, and permitted by the act, include those provided in the list of costs given below. The listing is only representative of allowable costs that may be financed by a loan from the authority. Other allowable costs may also fall within the language of the act, United States Code, title 33, sections 1381 to 1387.

A. acquisition costs of buildings or land under United States Code, title 33, sections 1381 to 1387;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

- G. underwriting, financial advisors, or placement fees;
- H. trustee fees;
- I. fees of guarantor, insurer, or financial institution, other than the authority, which provide letters of credit, surety bonds, or equivalent security;
- J. authority fees, including application and guaranty fees of the authority;
- K. certain contingency costs;
- L. interest costs during construction;
- M. legal fees, including those of the authority; and
- N. a debt service reserve fund.

Subp. 8. **Executive director.** “Executive director” means the executive director of the Public Facilities Authority.

Subp. 9. **Fund.** “Fund” means the Minnesota Water Pollution Control Revolving Fund created by Minnesota Statutes, section 446A.07, as amended.

Subp. 10. **Intended use plan.** “Intended use plan” means the document prepared annually by the agency according to requirements of the act and submitted to the United States Environmental Protection Agency. The plan will identify the intended uses of the amounts available to the fund, including a list of wastewater treatment projects and other eligible activities scheduled to be funded during the fiscal year.

Subp. 11. **Loan agreement.** “Loan agreement” means the loan agreement or financing agreement between the authority and the municipality that provides all the terms and conditions of the loan.

Subp. 12. **Municipal bond index.** “Municipal bond index” means the index based on the yield that about 500 major issuers, mainly of investment grade, would pay on new long-term (20 years) general obligation, tax exempt bonds. The index is published each Friday in the Wall Street Journal.

Subp. 12a. **Municipal service area.** “Municipal service area” means the geographic area of the municipality.

Subp. 13. **Municipality.** “Municipality” means any county, city, and town, the Metropolitan Waste Control Commission established in Minnesota Statutes, chapter 473 and the Metropolitan Council when acting under the provisions of that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subp. 14. **Poverty level.** “Poverty level” means the number of persons in poverty in a municipality, expressed as a percentage, identified as the poverty level of a municipality by the United States Census Bureau; or by another federal or state agency; or by an accredited independent survey, which most accurately measures the level of poverty within a municipality.

Subp. 15. **Project completion.** “Project completion” means the date on which the operation of the treatment works is initiated or is capable of being initiated.

Subp. 16. MR 1991 [Renumbered as Subp. 12a, 18 SR 614]

Subp. 17. **Quarterly set rate.** “Quarterly set rate” means the maximum rate of interest set for a calendar quarter and shall be determined by the authority using as guidance the average of the municipal bond index for the four weeks prior to the beginning of the quarter minus 100 basis points for 20-year term loans. For loans of less than 20 years, a discount of five basis points for each year less than 20 years shall be deducted from the quarterly set rate.

Subp. 18. **Sewer service area.** “Sewer service area” means the sewer service area that utilizes the municipal wastewater treatment system.

Subp. 19. **Sewer service charge.** “Sewer service charge” means a charge levied upon the users in the municipal service area to pay for the capital cost, operation, and maintenance, and replacement of equipment. Service charges include tax assessment, special assessments, user charges, or other charges identified by any other name.

Subp. 20. **Significant wastewater contributor.** “Significant wastewater contributor” means a nonresidential user whose current wastewater flow or projected wastewater flow causes the need for the construction of the wastewater treatment project, or whose current wastewater contribution is at or exceeds one-half of the current wastewater treatment plant’s flow.

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614*

7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS PROCESSING.

Subpart 1. **In general.** To apply for financial assistance from the authority, eligible applicants identified in the annual intended use plan prepared by the agency may submit an application at any time to the executive director of the authority, using the Department of Employment and Economic Development, Community Development Division’s single application process.

Prior to the submission of an application to the authority, the municipality shall contact the authority to receive the authority’s advice under Minnesota Statutes, section 446A.051.

The authority shall forward the application to the agency within ten day after receipt of the application by the authority. The agency will accept and review the application as provided in its rules.

Subp. 2. **Authority review.** When an application that has been certified by the commissioner of the agency and the as-bid cost have been received by the authority on or before the first business day of the month, the authority shall consider the application at the authority meeting that month. If the certified application is received after the first business day of the month and can be reviewed by the executive director prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 3. **Completed application.** An application certified by the commissioner of the agency is considered complete when the executive director of the authority determines that the exhibits and documentation which have been received provide a full and accurate account of the project financing to the extent that the authority is able to make an informed determination on the application.

Subp. 4. **Incomplete application.** If an incomplete application is received, the executive director shall notify the applicant in writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the executive director’s notification to complete the application. If the application is not completed and received by the executive director within those 60 days, the application is deemed to be rejected and the applicant, subject to agency rules, must reapply to be further considered.

Subp. 5. **Applications not receiving certification.** An application not receiving certification by the commissioner of the agency will not receive consideration for financial assistance by the authority. The executive director of the authority shall notify the applicant of the rejection of the application by the authority within ten days of the rejection determination.

Subp. 6. **Rejection of loan applications by authority.** The authority shall not provide financing for projects if the per household cost is in excess of \$10,000, in 1992 dollars, as adjusted by the Consumer Price Index, unless the commissioner of the agency certifies that the project should be funded due to the environmental benefit to the state. The authority may reject an application for financial assistance for the following reasons:

A. failure to obtain certification from the of the agency for the project;

B. failure to develop and document dedicated sources of revenue sufficient in the judgment of the authority to ensure repayment of the loan to the authority; and

C. failure to submit a completed application using the procedure provided in part 7380.0420, subpart 4.

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614; L 2003 1Sp4 s 1*

7380.0430 AUTHORITY EVALUATION PROCEDURE.

Subpart 1. **In general.** The authority shall evaluate applications certified by the commissioner of the agency to determine the applicant's capacity to comply with the terms and conditions of the Act and the rules of the authority as provided in this part.

The applicant's project must have been identified in the agency's intended use plan for the year in which the applicant is applying.

The authority will only provide financial aid for the allowable costs provided in part 7380.0410, subpart 7.

Subp. 2. Loan terms and conditions.

A. The terms and conditions for loans and other forms of financial assistance provided by the authority to eligible applicants for certified projects are as provided by the act; Minnesota Statutes, chapter 446A; this part; and as provided by the authority in the loan agreement and the general obligation promissory note issued by the municipality to the authority for the project financing.

B. If the authority provides a loan to a municipality for planning or design engineering of a wastewater treatment facility, the interest rate, terms, and conditions must be the same as for loans elsewhere in this part.

Subp. 3. **Repayment.** The repayment of loans to the authority by the recipient must be sufficient to fully amortize the loan for a period of not more than 20 years after project completion. If treatment works have been segmented or phased, the repayment requirements of this subpart and the payment requirements of subpart 6 apply to each phase or segment of the project.

Subp. 4. **Dedicated sources of revenue.** Loan recipients shall establish, and identify in the application, dedicated sources of revenue sufficient to operate and maintain the new facility, replace equipment, and fully amortize the loan for a term of not more than 20 years. The authority shall examine the identified dedicated sources of revenue to ensure that they are a sufficient amount and of sufficient certainty to fully repay the loan. Municipalities whose projects involve significant wastewater contributors shall be required to enter into an agreement with the significant wastewater contributor so as to ensure that the municipality and the authority are adequately protected in the event that the significant wastewater contributor curtails its operations, ceases operations, or moves out of the municipality.

Subp. 5. **Payments.** The first principal and interest payment is due and payable not later than one year after project completion, or 24 months from the approval of the loan by the authority, whichever is earlier. Subsequent principal and interest payments by the loan recipient must be made at the times agreed upon by the loan recipient and the authority in the loan agreement. In general, semiannual loan payments will be required, unless a different payment schedule is agreed upon and provided in the loan agreement. However, in no case shall payments be less frequent than annual principal and interest payments sufficient to amortize the debt within the contracted period. Interest shall accrue on any funds paid out to the borrower by the authority starting six months prior to the due date of the first loan repayment to the authority.

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614*

7380.0440 INTEREST RATE DETERMINATIONS.

Subpart 1. **In general.** The interest rate charged by the authority to a loan recipient must be determined as provided in this part, except that in no case shall the

rate of interest on a loan to a borrower be reduced to less than one percent, except as provided in subpart 6.

Subp. 2. Setting of interest rates.

A. The interest rate charged to a loan recipient must be determined by the authority using as guidance the quarterly set rate in effect at either the time of the municipality's application to the authority, or at the time of the approval of the loan by the authority as determined by the municipality at the time of the approval by the authority.

B. The applicant is entitled to the cumulative interest rate adjustments provided in this part, regardless of when the applicant chooses to set the interest rate as provided in item A. If an applicant's project includes a facility which has been in significant noncompliance in the past 12 months, all basis point reductions provided under this part shall be halved. Significant noncompliance means the facility is listed on the most recent "Facilities in Significant Noncompliance" report which the commissioner of the Minnesota Pollution Control Agency shall certify to the authority with the intended use plan and amendments to the intended use plan.

C. If the authority funds an applicant's project through the sale of authority bonds, the applicant may request in its loan application the specific basis point reduction from the average coupon rate of the bonds sold by the authority as provided in item D. If an applicant chooses this option, the applicant will not be entitled to receive any other interest rate adjustment as provided in item B or subparts 4 to 6. The applicant also must comply with the following conditions:

- (1) the payment schedule agreed to follows the payment schedule of the bonds sold by the authority;
- (2) acceptable agreement on fund accountability is reached;
- (3) the municipality can demonstrate its creditworthiness; and
- (4) the integrity of the fund is maintained.

D. The authority shall annually provide by resolution the specific basis point reduction it will allow under item C.

Subp. 3. Suspension of loans at the quarterly set rate. The authority may suspend offering loans at the quarterly set rate if it determines that market conditions impacting the municipal bond index are unsettled or impair the viability of the fund. At the time of that determination, the authority may by resolution adopt a revised quarterly set rate, based upon generally accepted practices of interest rate forecasting, for a period of time determined by the authority. The authority may, based upon market conditions, extend the offering of loans at the revised quarterly set rate and continue to do so until the time the authority considers it prudent to again use the municipal bond index as guidance for the quarterly set rate.

Subp. 4. Demographic considerations.

A. A loan application will be considered for an interest rate reduction based upon the population of the municipal project service area, and be eligible for a reduction as follows:

(1) Applicants with a municipal service area population of 25,000 or less and larger than 5,000 are eligible to receive the quarterly set rate minus 25 basis points, subject to the interest rate adjustments in this part.

(2) Applicants with a municipal service area population of 5,000 or less and larger than 2,500 are eligible to receive the quarterly set rate minus 50 basis points, subject to the interest rate adjustments in this part.

(3) Applicants with a municipal service area population of 2,500 or less but larger than 1,000 are eligible to receive the quarterly set rate minus 75 basis points, subject to the interest rate adjustments in this part.

(4) Applicants with a municipal service population of 1,000 or less are eligible to receive the quarterly set rate minus 100 basis points, subject to the interest rate adjustments in this part.

B. The data used to determine the population, the median household income, and poverty level of the municipality should be that which most accurately measures the population, median household income, and poverty level of the municipality. The authority shall determine if the data submitted by the municipality is an appropriate and accurate measurement of the population, household income, and poverty level of the municipality.

C. The metropolitan and nonmetropolitan median household income levels of the state must be determined from income data from the most recent census of the United States or from data from the state demographer. The data provided must be applied as the criteria to determine if the municipality's service area household income is at, below, or above the median household level for the metropolitan or nonmetropolitan area as applicable.

D. If there is reason to believe that the United States census data or the data from the state demographer is not a currently accurate representation of the median household income, poverty level, or population of the municipality, the applicant may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income, poverty level, or population of the municipality. The information must consist of reliable data from local, regional, state or federal sources, or from a survey conducted by a reliable impartial source. If the authority determines that the demographic data submitted by the municipality does not reflect the most current or accurate measure of the municipality's population, median household income level, and poverty level, the authority shall update the demographic data to reflect the most current and accurate figures.

Subp. 5. **Interest rate adjustment.** Any applicant is eligible to receive consideration for interest rate adjustments to the interest rate to be charged by the authority as provided in this subpart.

A. The median household income is the income level for the municipal service area of the facility being financed by the authority. If the median household income level of the municipality is below the median household income level for a metropolitan or nonmetropolitan area, as applicable, the applicant is eligible for a 50 basis point reduction in the rate.

B. If the percentage of poverty level households in the municipality is at or above the national average, the applicant is eligible for a 100 basis points reduction in the interest rate charged by the authority.

C. If the estimated annual sewer service charge of the municipality after the completion of the project:

(1) is at or exceeds one percent of the median household income level of the municipality, the municipality is eligible for a 50 basis point reduction in the interest rate;

(2) is at or exceeds 1-1/2 percent of the applicant's median household income, the municipality is eligible for a 100 basis point reduction in the interest rate; or

(3) is at or exceeds two percent of the applicant's median household income, the municipality is eligible for a 150 basis point reduction in the interest rate.

Subp. 6. MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614*

7380.0450 OTHER FINANCIAL ASSISTANCE.

In addition to the loans provided in parts 7380.0430 to 7380.0440, the authority may use any forms of financial aids provided in United States Code, title 33, section 1383(d). The use of specific financing tools will be determined by the authority based on existing financial market conditions at the time the financing of the project takes place.

The revolving loan fund authorized by the act may be used:

A. to buy or refinance the debt obligation of municipalities for treatment works for which the debt was incurred and construction begun after March 7, 1985, at or below market rate;

B. to guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

C. to provide a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the authority if bond proceeds are deposited in the fund; and

D. to provide loan guarantees for similar revolving funds established by a governmental unit other than state agencies.

Statutory Authority: *MS s 446A.07 subd 10*

History: *13 SR 2155*

7380.0460 FEES.

If the authority charges a loan recipient a loan origination fee, the fee must be based on a schedule established by the authority and must not exceed one and one-half percent of funds borrowed from the authority. The fees, if any, will be charged to all loan recipients and must be as provided in the loan application form. These fees may be included as an eligible project activity or category in the municipality's application to the authority, and are due and payable as provided in the loan agreement.

Statutory Authority: *MS s 446A.07 subd 10*

History: *13 SR 2155*

7380.0470 RELEASE OF FUNDS.

Subpart 1. **In general.** Subject to the availability of funds, payments to the governmental unit for an approved project will be made in accordance with applicable state and federal law governing payments, but payments will not be made until the authority has determined the total estimated cost of the project, and ascertained that the total final financing of the project is assured by the following:

A. a loan authorized by state law or the appropriation proceeds of bonds or other money of the municipality to a fund for construction of a project; and

B. an irrevocable undertaking, by resolution of the applicant, to use the loan proceeds exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the final estimate by the appropriation to the construction fund of additional money or proceeds of additional bonds to be issued by the governmental unit.

Subp. 2. **Adverse change.** The authority shall not release funds to a municipality for an approved project until the authority has determined that there have been no adverse changes in the financial capacity of the municipality since the day of the completion of the application.

The authority reserves the right to suspend or terminate funding to the municipality if the authority determines that there has been an adverse change.

Subp. 3. **Conformance with plans and reporting requirements.** The authority shall withhold, suspend, or terminate either total or partial payments if the authority determines that a project does not substantially conform to approved plans and specifications, or there has been substantial noncompliance with reporting requirements.

The executive director shall give a municipality written notice of the deficiencies the authority has determined exist, and the time in which the municipality must demonstrate to the authority's satisfaction that the condition has or will be corrected. The time for demonstration must not exceed 90 days.

Statutory Authority: *MS s 446A.07 subd 10*

History: *13 SR 2155*

7380.0480 REPORTS AND AUDITS.

Subpart 1. **Reports.** During the term of the loan, the municipality shall make written reports to the executive director on forms provided by the authority and on a schedule determined by the executive director.

Subp. 2. **Audits.** Financial assistance recipients must arrange and pay for independent audits, acceptable to the authority and prepared, if required by the Clean Water Act, in compliance with the Office of Management and Budget, Circular A-128, published in the Federal Register, volume 50, number 188, page 39083, on September 27, 1985, and in compliance with the Single Audit Act of 1984, United States Code, title 31, sections 7501 to 7507.

Statutory Authority: *MS s 446A.07; 446A.071*

History: *13 SR 2155; 18 SR 614*

7380.0500 [Repealed, L 2004 c 206 s 53]

7380.0510 [Repealed, L 2004 c 206 s 53]

7380.0520 [Repealed, L 2004 c 206 s 53]

7380.0530 [Repealed, L 2004 c 206 s 53]

7380.0540 [Repealed, L 2004 c 206 s 53]

7380.0550 [Repealed, L 2004 c 206 s 53]

7380.0560 [Repealed, L 2004 c 206 s 53]

7380.0570 [Repealed, L 2004 c 206 s 53]

7380.0580 [Repealed, L 2004 c 206 s 53]

7380.0581 [Repealed, L 2004 c 206 s 53]

7380.0582 [Repealed, L 2004 c 206 s 53]

7380.0600 [Repealed, L 2004 c 206 s 53]

7380.0610 [Repealed, L 2004 c 206 s 53]

7380.0620 [Repealed, L 2004 c 206 s 53]

7380.0630 [Repealed, L 2004 c 206 s 53]

7380.0640 [Repealed, L 2004 c 206 s 53]

7380.0650 [Repealed, L 2004 c 206 s 53]

7380.0700 [Renumbered 7607.0100]

TRANSPORTATION REVOLVING LOAN FUND**7380.0705 PURPOSE.**

The transportation revolving loan fund provides loan assistance to eligible borrowers for approved transportation projects. The program is jointly administered by the Minnesota Department of Transportation and the Minnesota Public Facilities Authority. Minnesota Statutes, section 446A.085, authorizes the Minnesota Public Facilities Authority to manage and administer the fund and establishes the transportation committee of the Minnesota Public Facilities Authority to review and approve financial assistance to projects certified by the commissioner of transportation. Parts 7380.0705 to 7380.0775 provide for the authority's administration of its duties under Minnesota

Statutes, section 446A.085. Parts 8800.0050 to 8800.0500 provide for the Department of Transportation's responsibilities.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0710 [Renumbered 7607.0110]

7380.0715 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7380.0705 to 7380.0775 have the meanings given them in this part.

Subp. 2. **Act.** "Act" means the National Highway System Designation Act of 1995, Public Law 104-59, as amended.

Subp. 3. **Applicant.** "Applicant" means an eligible borrower under Minnesota Statutes, section 446A.085, subdivision 1, paragraph (b), that applies for a loan from the fund.

Subp. 4. **Application.** "Application" means the documents submitted to the executive director of the authority by an applicant that contain information and data in support of the applicant's loan request to the authority. The application includes the complete application forms provided by the authority. Municipal applicants must submit a municipal profile and current annual budget, or financial forecasts, as applicable, and financial audits for the last three years.

Subp. 5. **Authority.** "Authority" means the Minnesota Public Facilities Authority created in Minnesota Statutes, chapter 446A.

Subp. 6. **Basis point.** "Basis point" means the shorthand reference to 1/100 (0.01) of one percent.

Subp. 7. **Bond market index.** "Bond market index" means a nationally recognized index of yields on tax-exempt bonds, mainly of investment grade, that issuers would pay on issues of various maturities.

Subp. 8. **Debt service account.** "Debt service account" means a separate bookkeeping account established and maintained in a borrower's official financial records to account for the accumulation of resources for, and the payment of, the general obligation bond or revenue bond purchased by the authority.

Subp. 9. **Dedicated sources of revenue.** "Dedicated sources of revenue" means one or more sources of revenue pledged by a borrower for repayment of the loan.

Subp. 10. **Department.** "Department" means the Minnesota Department of Transportation.

Subp. 11. **Eligible costs.** "Eligible costs" means all or part of the cost of a project that may be financed by a loan from the fund provided the costs are permitted under the act and Minnesota Statutes, section 446A.085. Eligible costs include capitalized interest.

Subp. 12. **Executive director.** "Executive director" means the executive director of the authority.

Subp. 13. **Financial capability.** "Financial capability" means the capability of a borrower to retire debt incurred from the fund, as determined by its fiscal and socioeconomic data through such measures as: population trends, median household income, debt per capita, composition of municipal long-term debt, debt service coverage ratio, revenue coverage ratio, planned capital improvements, liquidity, revenue forecasts, audits or financial statements, as applicable, income and earning forecasts, financial forecasts, credit reports, and net worth calculations.

Subp. 14. **Fund.** "Fund" means the transportation revolving loan fund created in Minnesota Statutes, section 446A.085.

Subp. 15. **General obligation bond.** “General obligation bond” means a bond or note that is secured by the full faith and credit of a borrower as provided in Minnesota Statutes, chapter 475.

Subp. 16. **Loan.** “Loan” means financial assistance as defined in Minnesota Statutes, section 446A.085, subdivision 1, paragraph (d).

Subp. 17. **Loan agreement.** “Loan agreement” means the financing agreement between the borrower and the authority that provides the interest rate and the terms and conditions of the loan.

Subp. 18. **Municipal profile.** “Municipal profile” means a written document prepared by a municipality that describes population trends, major employers, building permits, largest taxpayers, trends of estimated market values, property tax rates, property tax collection, net tax capacity, indebtedness, budget forecasts, project capital expenditures, educational and health care facilities, and other information deemed necessary by the authority or its rating agencies to make an informed determination on the creditworthiness of the municipality.

Subp. 19. **Revenue bond.** “Revenue bond” means a bond or note payable from one or more specified sources of revenue and to which the full faith and credit of the issuing entity is not pledged.

Subp. 20. **Transportation committee.** “Transportation committee” means a committee of the authority, acting on behalf of the authority, as provided in Minnesota Statutes, section 446A.085, subdivision 1.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0720 [Renumbered 7607.0120]

7380.0725 APPLICATIONS.

Subpart 1. **Evaluation of loan applications.** The executive director and staff shall evaluate loan applications for projects certified by the department. Loan applications must provide sufficient information to allow the authority to make an informed determination about whether:

- A. the financing of the project is fully ensured;
- B. the applicant has the financial capability to repay the loan;
- C. collateral is being provided by the applicant to secure the loan to the extent required in part 7380.0735, subpart 3; and
- D. the applicant has the capability to comply with Minnesota Statutes, section 446A.085, parts 7380.0705 to 7380.0775, the loan agreement, and the permissible legal covenants of the general obligation bond or revenue bond that will be issued by the applicant to the authority.

Subp. 2. **Approval or rejection of loan applications.** The transportation committee shall approve a loan application unless it is rejected for one or more of the following reasons:

- A. failure of the applicant to ensure full project financing;
- B. failure of the applicant to demonstrate financial capability to repay the loan;
- C. failure of the applicant to collateralize the loan to the extent required in part 7380.0735, subpart 3;
- D. failure to develop a dedicated source of revenue sufficient to ensure timely repayment of the loan; or
- E. failure of the applicant to demonstrate its capacity to comply with Minnesota Statutes, section 446A.085, parts 7380.0705 to 7380.0775, the loan agreement, and the permissible legal covenants of the general obligation bond or revenue bond issued by the applicant to the authority.

Subp. 3. **Loan agreement.** When the applicant is ready to proceed with a project for which a loan application has been approved by the transportation committee, the executive director shall prepare a loan agreement.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0730 [Renumbered 7607.0130]

7380.0735 LOAN CONDITIONS.

Subpart 1. **In general.** Conditions for loans provided by the authority to borrowers for certified projects are as provided by the act, Minnesota Statutes, section 446A.085, parts 7380.0705 to 7380.0775, any applicable bond resolution or series bond resolution of the authority, the loan agreement, and the general obligation bond or revenue bond issued by the borrower to the authority for the project financing.

Subp. 2. **Specific conditions.** The conditions in items A to E apply to borrowers receiving a loan from the fund.

A. Borrowers other than the department shall provide a general obligation bond or revenue bond to the authority for the full amount of the loan. Borrowers must use a nationally recognized bond counsel identified as such and included in The Bond Buyer's Municipal Marketplace Directory to prepare bond and other related documents and render an opinion to the authority.

B. The maximum term of the loan shall not exceed the useful life of the project.

C. The borrower shall designate and maintain a dedicated source or sources of revenue sufficient to fully amortize the loan.

D. The borrower shall designate and maintain a debt service account.

E. The borrower shall begin making interest payments no later than one year after the execution of the loan agreement and principal payments on the loan no later than three years after the execution of the loan agreement. Subsequent principal and interest payments must be made in the amounts and at the times given in the loan agreement.

Subp. 3. **Collateral.** For borrowers providing a revenue bond for a private activity loan as provided in part 7380.0745, subpart 3, the authority shall take a security interest in privately held capital assets or real property to collateralize the loan.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0740 [Renumbered 7607.0140]

7380.0745 INTEREST RATE DETERMINATIONS.

Subpart 1. **Bond market index.** Except as provided in subpart 4, the interest rate charged to a borrower shall be as described in items A to C and shall be based on the bond market index on the day prior to the date of the loan agreement.

A. A borrower providing a general obligation bond to the authority shall be charged interest based on the yields for a Aaa rated issue.

B. The department shall be charged interest based on the yields for a Aaa rated issue.

C. A borrower providing a revenue bond to the authority shall be charged interest based on the yields for a Baa rated issue.

Subp. 2. **Discounts.** The discount given to a borrower shall be as described in items A and B.

A. The authority shall set annually by resolution the discount, if any, that shall be applied to the interest rate determined in subpart 1.

B. A borrower under 5,000 population shall receive an additional discount of 100 basis points.

Subp. 3. **Private activity loans.** If a loan meets the definition of private activity under section 141 of the Internal Revenue Code of 1986, as amended, the interest rate shall be determined by dividing the rate determined in subparts 1 and 2 by 0.75.

Subp. 4. **Loans funded through the sale of authority bonds.** The interest rates charged to a borrower whose project is funded through the sale of authority bonds shall be based on the yields on the authority's bonds, minus any discount set by resolution of the authority.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0750 [Renumbered 7607.0150]

7380.0755 OTHER FINANCIAL ASSISTANCE.

In addition to loans, the authority may provide other forms of financial assistance as provided in the act and in Minnesota Statutes, section 446A.085, subdivision 1. The transportation committee shall determine when other forms of financial assistance are appropriate based on existing financial conditions, the impact on the viability of the fund, the financial capacity of the borrower, and the advantages to the borrower.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0760 [Renumbered 7607.0160]

7380.0765 RELEASE OF FUNDS.

Subpart 1. **In general.** Subject to the availability of funds, disbursements to the borrower shall be made as project costs are incurred in accordance with applicable state and federal law governing such disbursements. In addition, no disbursements shall be made to a borrower until and unless the authority has determined the total estimated cost of the project and ascertained that the financing of the project is ensured by:

A. a loan authorized by state law or appropriation of bonds or other money of the borrower to fund the construction of the project; and

B. an irrevocable undertaking, by resolution of the borrower, to use all the money made available for the project exclusively for the project and to pay any additional amount by which the cost of the project exceeds the estimate by the appropriation to the construction fund of additional money or proceeds of additional bonds to be issued by the borrower.

Subp. 2. **Adverse change.** The authority shall not release funds to a borrower for an approved project until the authority has determined that there has been no adverse change in the financial capacity of the borrower since the day of the completion of the application. The authority reserves the right to suspend or terminate funding to a borrower if the authority determines that there has been an adverse change.

Subp. 3. **Withholding, disallowance, or termination of disbursements.**

A. The authority shall withhold or disallow either total or partial disbursements if the borrower fails to comply with the requirements of the act, Minnesota Statutes, section 446A.085, parts 7380.0705 to 7380.0775, the loan agreement, or the general obligation bond or revenue bond issued by the borrower to the authority.

B. If the authority withholds disbursements under item A, the executive director shall give a borrower written notice of the reasons and the time in which the borrower must demonstrate to the authority's satisfaction that the condition has or will be corrected. If the condition has not been corrected in the specified time period,

withheld disbursements may be terminated. Termination of disbursements means that the amount of the loan available to the borrower is reduced by the amount terminated.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0770 [Renumbered 7607.0170]

7380.0775 REPORTS, DISCLOSURE, AND AUDITS.

Subpart 1. **Project status reports.** During the term of the loan the borrower shall provide written reports to the authority. The content and timing of these reports must be as specified in the loan agreement.

Subp. 2. **Disclosure.** During the term of the loan the borrower must, on its own volition, disclose to the authority any material information or events impacting the creditworthiness of the borrower, including those requirements contained in rule 15c2-12 promulgated by the United States Securities and Exchange Commission, Code of Federal Regulations, title 17, section 240.15c2-12. If and when required by this rule, as determined by the authority, the borrower shall enter into a continuing disclosure document.

Subp. 3. **Audits.** During the term of the loan, the borrower must provide to the authority on an annual basis a financial audit conducted by an independent accounting firm.

Statutory Authority: *MS s 446A.085*

History: *23 SR 1353*

7380.0780 [Renumbered 7607.0180]

7380.0800 [Repealed, L 2004 c 206 s 53]

7380.0810 [Repealed, L 2004 c 206 s 53]

7380.0820 [Repealed, L 2004 c 206 s 53]

7380.0830 [Repealed, L 2004 c 206 s 53]

7380.0840 [Repealed, L 2004 c 206 s 53]