

CHAPTER 8300
ENERGY AND ECONOMIC DEVELOPMENT
AUTHORITY
FINANCIAL ASSISTANCE

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8300.0100 DEFINITIONS.

Subpart 1. **Statutory definitions.** The terms defined in Minnesota Statutes, section 116M.03 have the same meanings when used in chapter 8300 as ascribed to them in the act.

Subp. 2. **Act.** "Act" means Laws of Minnesota 1980, chapter 547, as now in effect and as amended from time to time.

Subp. 2a. **Applicant.** "Applicant" means a person, partnership, firm, corporation, or association that applies to the authority for financial assistance.

Subp. 2b. **Authority.** "Authority" means the energy and economic development authority, formerly known as the small business finance agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 4. **Financial assistance.** "Financial assistance" means loans, loan guarantees or insurance, and any other use of funds permitted by the act.

Subp. 5. **Members.** "Members" means the commissioner and those persons appointed to the authority under Minnesota Statutes, section 116M.06.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.0200 [Repealed, 9 SR 111]

8300.0300 REGULAR MEETINGS.

Regular meetings of the authority shall be held on the fourth Wednesday of each month at 3:00 p.m. at the offices of the authority in St. Paul, Minnesota, unless another place of meeting is designated by resolution. If this date falls on a legal holiday, the regular meeting shall be held on the next succeeding business

day.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.0400 SPECIAL MEETINGS.

Special meetings of the authority may be called upon reasonable notice to all members by the chairperson or by a majority of the existing members of the authority, for the purpose of transacting any business designated in the notice, and shall be held at the business offices of the authority in Saint Paul, Minnesota, unless another place of meeting is designated by resolution. At a special meeting, no business may be considered other than as designated in the notice unless all of the members of the authority are present at the special meeting.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.0500 PUBLIC APPEARANCES AT MEETINGS OF MEMBERS.

The following procedures shall govern public appearances at meetings of the members:

A. With respect to regular meetings, the commissioner shall complete the agenda for meetings of the members not less than five nor more than seven days prior to the date of the meeting.

B. With respect to regular meetings, any person who desires to appear and address the members shall make a written request to the commissioner, at least ten days prior to the date of the meeting, setting forth the nature of the matter about which the person wishes to appear.

C. With respect to regular or special meetings, any person who desires to appear and address the members with respect to any matter enumerated on the agenda shall make a written request to the commissioner, at least 24 hours before the meeting.

D. Any member may at any time request that a person be permitted to appear and address the members at any regular or special meeting. All requests must be placed on the agenda for review by the members at the meeting. A majority vote of the members present is required to grant a request to address the members.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.0600 MISREPRESENTATION OF APPLICATION INFORMATION.

Subpart 1. **Affirmative duty.** An applicant or financial institution has an affirmative duty and obligation to update and correct all information provided to the authority.

Subp. 2. **Authority's action.** If information provided to the authority by either the applicant or the financial institution contains a material misrepresentation or omission, the authority may:

- A. reject an application whether or not previously approved;
- B. refuse to provide financial assistance;
- C. make financial assistance provided by it immediately due and payable; or

D. revoke any preliminary or final resolution prior to the provision of financial assistance or prior to the sale of the bonds approved by it.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

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8300.0700 [Repealed, 9 SR 111]

POLLUTION CONTROL FINANCIAL ASSISTANCE

8300.1000 UNIFORM POLLUTION CONTROL FINANCIAL ASSISTANCE APPLICATION FORMS.

The commissioner shall prepare uniform financial assistance application forms for each program of the authority setting forth the information necessary for the determination of probable eligibility for pollution control financial assistance. All forms must be submitted to the members for their review at a regular or special meeting and become effective only upon the approving vote of the members.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1100 ACCEPTANCE OF POLLUTION CONTROL FINANCIAL ASSISTANCE APPLICATIONS.

In determining whether to accept applications for pollution control financial assistance, the members shall examine the following facts:

A. the probable eligibility of the pollution control financial assistance for a federal guarantee;

B. the nature of the pollution control facilities to be financed with the financial assistance;

C. the location of the proposed facilities;

D. the availability of bonding authority under the act; and

E. the extent to which the financial assistance will assist and encourage the establishment, maintenance, and growth of small business in Minnesota and reduce to a manageable level the cost of the control of pollution and disposal of waste resulting from the operations of small business.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1200 AUTHORIZATION OF POLLUTION CONTROL FINANCIAL ASSISTANCE.

No pollution control financial assistance may be authorized until the members of the authority have received and reviewed the recommendation of the commissioner relating to the financial assistance, and until the members have adopted a resolution approving the financial assistance. If the authority intends to fund the financial assistance by issuing bonds or bond anticipation notes, the resolution must include a statement that the obligation of the authority to provide financial assistance is contingent on the ability of the authority to sell its bonds or bond anticipation notes, on terms which the members of the authority, in their sole discretion, deem acceptable. The resolution may include other conditions and provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

BUSINESS FINANCIAL ASSISTANCE

8300.1500 OVERVIEW OF PROCEDURE FOR APPROVAL OF BUSINESS FINANCIAL ASSISTANCE.

Subpart 1. **Owner's duty.** To be eligible for business financial assistance, an owner shall make an application for business financial assistance under parts 8300.1600 to 8300.1900 on approved application forms of the authority.

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Subp. 2. **Commissioner's duty.** The commissioner shall process the application in accordance with the procedures and limitations set out in parts 8300.1600 to 8300.1900. The criteria the commissioner shall use in approving an application for processing are set out in parts 8300.1600 to 8300.1900.

Subp. 3. **Agency's duties.** Upon the determination by the commissioner that the business financial assistance requested meets the eligibility requirements of parts 8300.1600 to 8300.1900, the authority shall determine under parts 8300.2100 and 8300.2200 if the authority intends to fund the requested business financial assistance subject to final authorization by the authority.

Subp. 4. **Resolution to approve financial assistance.** Upon the determination by the authority that the financial assistance requested in an application which has been accepted for processing can and should be funded, the authority shall adopt a resolution approving the financial assistance. If the authority intends to fund the financial assistance by issuing bonds, the resolution must include a provision that the obligation of the authority to provide the financial assistance is contingent on the ability of the authority to sell its bonds on terms which the authority, in its sole discretion, deems acceptable. In addition, a resolution may contain other provisions and conditions as the authority, in its sole discretion, deems advisable.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1600 APPLICATION PROCEDURES.

Subpart 1. **Submission of application.** The owner shall submit to the authority copies of the completed application upon the forms provided by the authority.

Subp. 2. **Incomplete applications.** Application is deemed to have been made when the authority receives a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. If an incomplete application is received, the commissioner shall notify the applicant specifying the deficiencies. The applicant has 60 days from the date of the commissioner's notification to complete the application. If the application is not completed within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered. If the commissioner is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business financial assistance are intended to finance expenditures not permitted under the act, the commissioner shall reject the application and so notify the applicant.

Subp. 3. **Review by commissioner.** Upon receiving a completed application, the commissioner shall review the application and shall make a determination as to whether the applicant is an owner as defined in the act or the proceeds of the requested business financial assistance are intended to finance expenditures permitted under the act.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1700 EXPENDITURES ELIGIBLE FOR FINANCIAL ASSISTANCE.

Costs eligible for funding are the expenditures set forth in the act, including but not limited to the following:

- A. land and/or building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;

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- E. equipment and/or machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. trustee's fee;
- I. fees of guarantor, fees or insurance contracts, letters of credit, municipal bond insurance, and surety bonds;
- J. Small Business Administration processing and administration fee, if applicable;
- K. authority fee and administrative costs and expenses;
- L. certain contingency costs;
- M. interest costs during construction;
- N. legal fees, including those of authority's bond counsel; and
- O. short-term costs of conducting an eligible small business.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1800 NOTIFICATION OF APPROVAL OR DISAPPROVAL OF APPLICATION.

After approving or disapproving an application, the commissioner shall notify the applicant of the determination and the treatment of the application as follows:

A. If the commissioner determines that the applicant is an owner as defined in the act and that the costs specified in the application are eligible, the application is then deemed accepted for processing and treated in accordance with the authority review provisions established in parts 8300.2100 and 8300.2200.

B. If the commissioner determines that the applicant is not an owner as defined in the act, the application must be rejected and not further considered.

C. If the commissioner determines that any of the costs described in the application are not eligible for financial assistance, the commissioner shall note the deficiencies in the application and shall so notify the owner. The owner has 30 days from the date of the commissioner's notification to amend the application. If the application is amended in a timely fashion to include only eligible costs, it must be treated in accordance with the authority review provisions established in parts 8300.2100 and 8300.2200. If the application is not properly amended within 30 days, the application is deemed rejected and not further considered.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.1900 REVIEW OF REJECTED APPLICATION.

If an application is rejected for processing under part 8300.1800, item B or C, the applicant may, within 30 days after date of the notification by the commissioner, request the commissioner to submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established. If the authority approves the application, the application must be treated in accordance with parts 8300.2100 and 8300.2200.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

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8300.2000 UNIFORM BUSINESS FINANCIAL ASSISTANCE APPLICATION FORMS.

The commissioner shall prepare uniform financial assistance application forms for use by the public setting forth the information necessary for the determination of eligibility for business financial assistance under the act and this chapter.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.2100 EVALUATION PROCEDURE.

Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the business financial assistance it shall pass a resolution giving approval to the project to be financed and stating the name of the owner, a brief description of the project, the amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The authority shall first pass a preliminary resolution if the authority intends to fund the financial assistance by issuing bonds. The preliminary resolution must not obligate the authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements which the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and furnish to the applicant a copy of the preliminary resolution.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

8300.2200 FACTORS TO CONSIDER IN EVALUATION PROCEDURE.

The authority shall review and consider approval of an application for business financial assistance, on the basis of effectuating the purposes of the act, regarding the following:

- A. that the applicant is an owner as defined in the act;
- B. that the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the financial assistance made or guaranteed in accordance with the terms of the financial assistance agreement;
- C. that the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan or duration of financial assistance, as appropriate;
- D. that the project will create or maintain a sufficient number and type of jobs to justify authority participation in its financing;
- E. that the project's feasibility is sufficient to allow the authority to sell the bonds if any required for its financing;
- F. that the project and its development are economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate;

G. that if the project shall have the effect of a transfer of employment from one area of this state to another the authority determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state; and

H. that the project will assist in fulfilling the purposes of the act.

Statutory Authority: *MS s 116M.08 subd 4*

History: *9 SR 111*

SCHOOL ENERGY CONSERVATION INVESTMENT LOANS

8300.2500 PURPOSE.

The purpose of parts 8300.2501 to 8300.2509 is to establish procedures for application by public school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for monitoring, evaluation, and closure of loan accounts under the school energy loan program.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2501 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 8300.2500 to 8300.2509, the following terms have the meaning given them.

Subp. 2. **Applicant.** "Applicant" means a public school district in Minnesota.

Subp. 3. **Authority.** "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 4. **Building.** "Building" means an existing building owned and operated by a public school district.

Subp. 5. **Conservation measure.** "Conservation measure" means an energy conservation measure that is an installation or modification of an installation to a building and that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Maxi-audit.** "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major operational modifications.

Subp. 7. **Payback.** "Payback" means the simple payback that is equal to the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 8. **Project.** "Project" means all proposed work in an application for a loan to a school district.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2502 SCHOOL ENERGY LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The authority shall approve school energy loans to applicants to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37 and parts 8300.2502 to 8300.2505.

Loans are available to applicants that have not previously received or been offered loan funds under this program, for new projects in school districts that

previously received or were offered loan funds under this program, and as amendments to loans for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved project if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one loan for the same conservation measure in the same building.

Subp. 2. **Prior approval required.** Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, projects that have been contracted for or begun before the authority notifies the school district that the loan application is approved are not eligible. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

Subp. 3. **Existing buildings; new construction.** Only projects for existing buildings are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2503 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the \$30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to \$250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to \$1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to \$500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to \$250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute that fund equally among the three allocations.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2504 SCHOOL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. **In general.** An applicant shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. **Contents.** The application must contain: the school district or vocational center number; complete mailing address of the school district including the county; contact person's name, title, and telephone number; federal employer identification number; list of buildings included in the request and the dollar amount requested per building; name and address of each building, including the county; the total floor area in square feet for each building; original construction date for each building and building additions; the state legislative district; and a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure

will be started and completed; and a certification to assure proper and efficient operation of the building once the project is completed. An application for an amendment for cost overruns must also contain a copy of the bid selected.

An application must also contain an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building involved in the project. One copy of the application is required.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2505 SCHOOL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. **Administrative review.** The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board on school district or school board letterhead is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. **Technical review.** A technical review must be based on the maxi-audit submitted for each building included in a loan application. The applicant shall submit the maxi-audit with the loan application on forms provided by the authority. The minimum requirements for a maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

The authority shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. **Review results.** The authority shall accept, reject, or modify a loan application request as necessary based on this review. The authority shall give to an applicant whose application is rejected a written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the conservation measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the project proposal at a later date after making the necessary changes.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2506 LOAN APPROVAL.

Subpart 1. **Authority approval.** The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approve loans so that each affected application receives an equal percentage of the eligible loan amount request.

Subp. 2. **Execution of loan contract and disbursement of funds.** Upon approval of a school energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be issued upon execution of and according to the terms of the loan contract.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2507 REPORTS AND MONITORING FOR SCHOOL ENERGY LOAN PROGRAM.

Subpart 1. **In general.** A school district that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the school district fails to substantially comply with the start and end dates given in the loan application as approved, and if the school district cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. **Quarterly financial report.** The school district shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the school district shall submit to the authority, on forms provided by the authority, a final project status report and a financial status report that gives actual expenditures of the measures implemented.

Subp. 5. **Annual energy report.** The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*

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8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

Statutory Authority: *MS s 116J.37 subd 7*

History: *9 SR 1614*