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DRINKING WATER REVOLVING FUND

7380.0250 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 7380.0250 to 7380.0480. In addition, terms defined in Minnesota Statutes, chapter 446A, have the meanings as defined therein.

Subp. 2. **Act.** "Act" means:

A. for the drinking water revolving fund in parts 7380.0252 to 7380.0297, act means the Public Health Service Act, as amended, federal Safe Drinking Water Act, United States Code, title 42, chapter 6A, Public Health Service, subchapter 12, Safety of Public Water Systems, Part E, sections 300j-12, et seq., Public Law 104-184, title XIV, section 1452, Part E; and

B. for the clean water revolving fund in parts 7380.0400 to 7380.0480, act means the federal Water Pollution Control Act, as amended, United States Code, title 33, Navigation and Navigable

Waters Act, chapter 26, Water Pollution Control and Prevention, subchapter VI, State Water Pollution Control Revolving Funds, section 1381, et seq., Public Law 92-500.

Subp. 3. **Applicant.** "Applicant" means an entity that has applied, or intends to apply, to the authority for financial assistance, and:

A. for a drinking water revolving fund project, is 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.

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 bond 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 7380.0272 shall be based on the entity responsible for providing public drinking water; or

B. for a clean water revolving fund project, is a governmental unit as defined in Minnesota Statutes, section 446A.02, subdivision 5.

Subp. 4. **Application.** "Application" means the completed documents, including the application forms obtained from the authority, submitted to the authority by the applicant which contain information and data in support of the applicant's request for financial assistance.

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

Subp. 5a. **Base discount.** "Base discount" means the interest rate discounts set by the authority in the drinking water revolving fund intended use plan and the clean water revolving fund intended use plan to be applied in the determination of interest rates as provided in parts 7380.0272, subpart 3, and 7380.0442, subpart 3. The authority shall have the option to set the base discount at decreasing levels for increasing loan amounts.

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

Subp. 6a. **Bond yield scale-authority bonds.** "Bond yield scale-authority bonds" or "authority scale" means a scale of annual rates that consists of the yield to maturity for each maturity including mandatory sinking fund redemptions of the applicable series of authority bonds. If a loan has principal redemptions in years for which no maturity exists in the authority bond series, the authority will use, for those years, the rates from the applicable bond yield scale-market index.

Subp. 6b. **Bond yield scale-market index.** "Bond yield scale-market index" or "market scale" means the scales of annual rates by term of maturity and by grade, for example, Aaa, Aa, A, on tax-exempt municipal bonds, from a nationally recognized daily index.

Subp. 7. **Borrower.** "Borrower" means an applicant that has entered into a loan agreement with the authority.

Subp. 8. [Repealed, 32 SR 321]

Subp. 8a. **Debt security.** "Debt security" means a general obligation bond or note, revenue bond, or promissory note and other instruments required by the authority.

Subp. 9. **Debt service account.** "Debt service account" means a separate account established and maintained in a borrower's official financial records to account for the accumulation of resources for, and the payment of, the debt security issued by a borrower and purchased by the authority to effect the loan transaction for the financing of the borrower's project.

Subp. 10. **Dedicated sources of revenue.** "Dedicated sources of revenue" means one or more sources of revenue pledged by a borrower for payment of debt service required by the loan agreement.

Subp. 10a. **Default.** "Default" means a failure by a borrower to make timely payments of interest and principal or a failure to comply with the terms and conditions of the debt security and the loan agreement with the authority, including parts 7380.0250 to 7380.0480, where applicable.

Subp. 11. [Repealed, 32 SR 321]

Subp. 12. **Eligible costs.** "Eligible costs" means the costs that may be financed by the authority, pursuant to the applicable acts, provided that the eligible cost items are reasonable, necessary, permitted by the applicable law, and are within the project scope as certified by the Department of Health or Pollution Control Agency, as applicable. Eligible costs may include, but are not limited to, the following:

A. land acquisition costs:

(1) for a drinking water revolving fund project under United States Code, title 42, chapter 6A, subchapter XII, Part E, section 300j-12; and

(2) for a clean water revolving fund project under United States Code, title 33, chapter 26, subchapter VI, sections 1381 to 1387;

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, other than the authority, which provide letters of credit, surety bonds, or equivalent security;

J. certain contingency costs;

K. interest costs during construction, including capitalized interest; and

L. legal fees, including those of the authority.

Subp. 13. [Repealed, 32 SR 321]

Subp. 14. **Executive director.** "Executive director" means the executive director of the authority.

Subp. 15. **Financial capability.** "Financial capability" means the capability of an applicant to pay for its portion of the project costs, debt service, operation, and maintenance. Financial capability indicators include, but are not limited to, available fiscal and socioeconomic data such as population trends, median household income, composition of municipal long-term debt, debt per capita, debt service coverage ratio, and available reports such as audits or financial statements, as applicable, financial forecasts, credit reports, and net worth calculations.

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:

A. for parts 7380.0252 to 7380.0297, the drinking water revolving fund as provided in Minnesota Statutes, section 446A.081, subdivision 2; or

B. for parts 7380.0400 to 7380.0480, the clean water revolving fund created by Minnesota Statutes, section 446A.07.

Subp. 18. **General obligation bond.** "General obligation bond" means a bond or note 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. [Repealed, 32 SR 321]

Subp. 20a. **Loan.** "Loan" means the transaction in which the authority purchases the debt security of a borrower.

Subp. 21. **Loan agreement.** "Loan agreement" means the financing agreement between a borrower and the authority that outlines the terms and conditions under which the authority will purchase the debt security of the borrower.

Subp. 21a. **Loan closing.** "Loan closing" means the date on which a borrower delivers and the authority accepts an executed debt security.

Subp. 21b. **Municipal drinking water system.** "Municipal drinking water system" means the collective term to denote all property involved in the operation of a public drinking water supply system, including, but not limited to, the source of the drinking water supply, treatment facilities, water storage, water lines, valves, meters, and general property, regardless of whether a private, public, or nonprofit system.

Subp. 21c. **Municipal storm water system.** "Municipal storm water system" means the collective term to denote all publicly owned property involved in the operation of a storm water treatment system including, but not limited to, a device, method, system, or systems designed to reduce, store, treat, separate, stabilize, or dispose of storm water for purposes of preventing or abating pollution, or maintaining or improving water quality.

Subp. 21d. **Municipal wastewater system.** "Municipal wastewater system" means the collective term to denote all publicly owned property involved in the operation of a wastewater treatment system, including, but not limited to, collector sewers, interceptors, lift stations, treatment facilities, outfall lines, and general property.

Subp. 22. [Repealed, 32 SR 321]

Subp. 23. **Official statement.** "Official statement" means the legal document prepared by the authority that 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 bond offering. 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 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 a portion of the financial institution's loan to an eligible borrower. The authority's share of the participation loan must not exceed 50 percent of the loan balance at the time of purchase or \$50,000, whichever is less.

Subp. 25. [Repealed, 32 SR 321]

Subp. 25a. **Project.** "Project" means the planning, design, and construction of a drinking water, wastewater, or storm water system, or portion thereof, for which an applicant applies for financial assistance from the authority.

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. [Repealed, 32 SR 321]

Subp. 27a. **Project service area.** "Project service area" means the geographic area to be served by the project. If the project will serve only a portion of the entire geographic area served by the applicant's drinking water, wastewater, or storm water system, the project service area shall be that portion of the geographic area to be served by the project, unless any of the costs of the project will be paid by the entire geographic area served by the applicant's drinking water, wastewater, or storm water system.

Subp. 27b. **Residential system cost.** "Residential system cost" means that portion of the costs associated with building, operating, and maintaining the municipal drinking water system, the

municipal storm water system, or the municipal wastewater system that will be charged to residential users in the project service area.

Subp. 28. **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, issued by a city of the first class which cannot issue a general obligation bond to finance its water supply system without first obtaining the approval of the electors at a referendum.

Subp. 28a. **Significant storm water contributor.** "Significant storm water contributor" means a nonresidential property owner or developer from whose property the current storm water flow or the projected storm water flow causes the need for the project, or which, after project completion, will exceed 50 percent of the storm water treatment system's capacity.

Subp. 28b. **Significant storm water contributor agreement.** "Significant storm water contributor agreement" means a written agreement between a borrower and a significant storm water contributor that will protect the financial interest of the borrower in the event the storm water contributor curtails or ceases its operation. This agreement must include a secured, written guarantee by the significant storm water contributor for its proportional share of the debt payments for the term of the authority's loan with the borrower.

Subp. 28c. **Significant wastewater contributor.** "Significant wastewater contributor" means a nonresidential user of a municipal wastewater treatment system whose current wastewater flow or projected wastewater flow causes the need for the construction of the project, or whose wastewater contribution, after project completion, will exceed 50 percent of the wastewater treatment system's capacity.

Subp. 28d. **Significant wastewater contributor agreement.** "Significant wastewater contributor agreement" means a written agreement between a borrower and a significant wastewater contributor that will protect the financial interest of the borrower in the event the wastewater contributor curtails or ceases its operation. The agreement must include a secured, written guarantee by the significant wastewater contributor for its proportional share of the debt payments for the term of the authority's loan with the borrower.

Subp. 29. **Significant water user.** "Significant water user" means a nonresidential user of a municipal drinking water system whose current water needs or projected water needs cause the need for construction of the project, or whose water intake after the project is completed will exceed 50 percent of the total gallons annually supplied by the water supply system.

Subp. 29a. **Significant water user agreement.** "Significant water user agreement" means an agreement between a borrower and a significant water user that will protect the financial interest of the borrower in the event the water user curtails or ceases its operation. The agreement must include a secured, written guarantee by the significant water user for its proportional share of the debt payments for the term of the authority's loan with the borrower.

Subp. 30. [Repealed, 32 SR 321]

Subp. 31. [Repealed, 32 SR 321]

Subp. 32. [Repealed, 32 SR 321]

Subp. 33. [Repealed, 32 SR 321]

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321; L 2008 c 277 art 3 s 4*

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7380.0252 PURPOSE.

The drinking water revolving fund provides loans and other forms of financial assistance to eligible public drinking water suppliers to plan, design, and construct 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 is responsible for managing the fund in perpetuity, including making loans to eligible borrowers and receiving debt service payments. Parts 7380.0252 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.07; 446A.081; 446A.11*

History: *32 SR 321*

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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. projects listed in the fundable range on the prior year's intended use plan that met the application requirements in part 7380.0260 and were certified by the Department of Health as provided in part 4720.9060 but did not receive a loan award;

B. new projects meeting the eligibility requirements in subpart 2 which are in the fundable range as determined in subpart 3;

C. the base discount for interest rates on loans; and

D. the other eligible activities to be funded as provided in the act, and the amounts to be allocated for each.

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 of Health 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) a project cost estimate and the requested loan amount; and
- (3) a project schedule indicating that the project will proceed in the fiscal year for which the intended use plan is being prepared.

Subp. 3. **Fundable range.** Eligible projects shall be listed on the intended use plan in order of their priority on the project priority list maintained by the Department of Health, as provided in part 4720.9015, beginning first with the projects identified in subpart 1, item A, and, secondly with the projects meeting the requirements in subpart 1, item B. The authority shall identify the fundable range based on the amount determined to be available for loans.

Subp. 4. [Repealed, 32 SR 321]

Subp. 5. **Amendments to intended use plan.** If the authority determines that sufficient funds are available and projects meet the eligibility criteria of subpart 2, the authority has the option to amend the intended use plan to place additional projects in the fundable range.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

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7380.0260 APPLICATIONS.

Subpart 1. **Timing.** Applicants whose projects are listed in the fundable range on the intended use plan as described in part 7380.0255 must submit the following within six months after the date the authority adopts the intended use plan or an amendment to the intended use plan:

- A. an application for financial assistance to the authority; and
- B. plans and specifications for construction projects to the Department of Health as provided in part 4720.9045.

Subp. 2. [Repealed, 32 SR 321]

Subp. 3. [Repealed, 32 SR 321]

Subp. 4. **Complete applications.** An application must contain the required forms, data, exhibits, and documentation 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 based on the authority's analysis of user charges, special assessments, 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, planned capital expenditures, and other information

requested by the authority to make an informed determination on the creditworthiness of the applicant;

C. the applicant has provided the assurances, certifications, and resolutions necessary to comply with the laws and regulations applicable to the fund; and

D. adequate collateral is being provided by the applicant to secure the loan.

Subp. 5. [Repealed, 32 SR 321]

Subp. 6. **Evaluation of applications.** The executive director and staff shall evaluate applications for projects certified by the Department of Health to determine the applicant's capacity to comply with the act, Minnesota Statutes, section 446A.081, parts 7380.0250 to 7380.0297, the loan agreement, and the covenants of the debt security that will be issued. When the Department of Health'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 or executive director on behalf of 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 of Health 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 and document dedicated sources of revenue sufficient to ensure debt service payment 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 demonstrate creditworthiness sufficient to repay the authority debt or adequately collateralize the loan;

F. failure of the applicant to demonstrate its capacity to comply with the act, Minnesota Statutes, section 446A.081, parts 7380.0252 to 7380.0297, the loan agreement, and the covenants of the debt security; or

G. failure of the applicant to correct a default condition on a prior loan with the authority.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

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7380.0265 LOAN TERMS AND CONDITIONS.

Subpart 1. **In general.** Subject to the availability of funds, the authority shall provide loans or other financial assistance for eligible costs of projects listed in the fundable range on the intended use plan which are not rejected for any of the reasons listed in part 7380.0260, subpart 7. The act, other applicable federal laws and regulations, Minnesota Statutes, Minnesota Rules including parts 7380.0252 to 7380.0297, the capitalization grant, and the authority's basic bond resolution and series bond resolution, all as amended from time to time, govern the terms and conditions of the loan agreement issued by the authority. Except as provided in subpart 3, all borrowers shall issue a general obligation bond or a revenue bond to the authority as debt security for the loan agreement. The borrower's authorizing resolution for issuance of debt to the authority shall acknowledge the primacy of the terms and conditions of the loan agreement.

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 loan must be amortized over a period not to exceed 20 years. In no case may the term of the loan exceed the design life of the project being financed.

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 interest payments on the loan no later than one year after approval of the loan. The principal payments must begin no later than 18 months after approval of the loan or one year after project completion as estimated in the application, whichever is earlier. Principal and interest payments must be made in the amounts and at the times stated by the authority in the loan agreement. Interest accrues immediately on funds disbursed to the borrower by the authority.

F. Throughout the life of the loan the borrower shall, upon request of the authority:

(1) update pertinent information contained in the original application;

(2) attest that the information does not contain any untrue statement of material fact;

and

(3) authorize the authority to use the information to meet its continuing disclosure obligations.

Subp. 3. **Borrowers not providing general obligation or revenue bonds.** The authority shall provide financial assistance to a borrower not issuing a general obligation or revenue bond by utilizing a participation loan. The maximum participation must not exceed 50 percent of the loan balance at time of purchase or \$50,000, whichever is less. The terms and conditions in items A to D apply to participation loans.

A. The maximum term of the loan shall be based on the useful life of the project not to 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 participation loans, the financial institution and the authority shall take a proportional security interest in capital assets or real property of the borrower to collateralize the loan.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

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7380.0270 [Repealed, 32 SR 321]

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7380.0272 INTEREST RATE DETERMINATIONS.

Subpart 1. **In general.**

A. Except as provided in part 7380.0275 for participation loans, the rate of interest on a loan must be based on the principal redemption schedule of the loan, the appropriate bond yield scale identified in subpart 2, and the applicable interest rate discounts identified in subpart 3.

B. The interest rate on a loan must be set based on the date that the authority receives from the applicant a formal request to proceed with the loan agreement. This must be after the authority has received all of the following:

- (1) a complete application;
- (2) project certification by the Department of Health; and
- (3) documentation of as-bid costs.

C. In no case may the interest rate on a loan be less than one percent.

D. For loans funded in whole or in part with proceeds of authority bonds, the rate of interest on those loans must not exceed a rate which results in the yield on the loan being materially higher than the yield on the bonds as required and defined in the Internal Revenue Code of 1986, as amended, and the regulations and interpretations of the United States Department of Treasury promulgated with respect thereto, including and without limitation Code of Federal Regulations, title 26, section 1.148(2)(d).

Subp. 2. **Bond yield scale.** The bond yield scale used in calculating the loan rate must be the greater of the authority scale, if authority bond proceeds are available, or the market scale, as described in items A to D.

A. For loans secured with a tax-exempt general obligation bond, the rate must be based on the greater of the Aaa market scale or the unadjusted authority scale.

B. For loans secured with a taxable general obligation bond, the rate must be based on the greater of the Aa market scale or the authority scale adjusted for the difference between the Aaa market scale and the Aa market scale.

C. For loans under item A, the authority has the option to accept a tax-exempt revenue bond, in place of a tax-exempt general obligation bond, from a city of the first class that cannot issue a general obligation bond to finance a water supply system without first obtaining the approval of the electors at a referendum. The rate for a loan secured with a tax-exempt revenue bond must be based on the greater of the Aaa market scale or the unadjusted authority scale.

D. For loans under item B, the authority has the option to accept a taxable revenue bond, in place of a taxable general obligation bond, from a city of the first class that cannot issue a general obligation bond to finance a water supply system without first obtaining the approval of the electors at a referendum. The rate for a loan secured with a taxable revenue bond must be based on the greater of the Aa market scale or the authority scale adjusted for the difference between the Aaa market scale and the Aa market scale.

Subp. 3. **Interest rate discounts.** Interest rate discounts must be provided as described in items A and B unless item C applies.

A. Borrowers are eligible for a base discount as determined by the authority in part 7380.0255, subpart 1, item C.

B. Borrowers with a project service area population under 2,500 must receive additional discounts on loan amounts up to \$20,000 per household as provided in subitems (1) and (2).

(1) A borrower must receive an interest rate discount of 50 basis points 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.

(2) A borrower must receive an interest rate discount based on its estimated average annual residential system cost per household after completion of the project. If the average residential

system cost per household, as a percentage of median household income of the borrower, is greater than:

- (a) 2.00 percent, the borrower must receive a discount of 150 basis points;
- (b) 1.75 percent but less than 2.00 percent, the borrower must receive a discount of 125 basis points;
- (c) 1.50 percent but less than 1.75 percent, the borrower must receive a discount of 100 basis points;
- (d) 1.25 percent but less than 1.50 percent, the borrower must receive a discount of 75 basis points; or
- (e) 1.00 percent but less than 1.25 percent, the borrower must receive a discount of 50 basis points.

C. For loans with projects involving a significant water user, the interest rate discounts provided in items A and B must not be applied unless a significant water user agreement is in place.

Subp. 4. **Demographic data.** For the purpose of calculating interest rate discounts in subpart 3, the data used to determine the population and median household income of the borrower must be that which most accurately measure the current population and median household income of the project's service area. If there is reason to believe that the United States Census data or the data from the state demographer is not a current, accurate representation of the median household income or population of the project's service area, the borrower may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income or population of the project's 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 and median household income of the project's service area, the authority shall update the demographic data to reflect the most current and accurate figures.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0275 INTEREST RATE DETERMINATIONS FOR PARTICIPATION LOANS.

Subpart 1. **Participation loans.** The interest rate on the participation share of the loan purchased by the authority shall be at the rate of two percent. The financial institution may retain 50 percent of the interest collected on the authority's participation share of the loan as payment for duties performed as lead lender to the borrower.

Subp. 2. [Repealed, 32 SR 321]

Subp. 3. **Disbursement.** The authority shall make a single disbursement to the financial institution after project completion and within 30 days upon receipt of a request and supporting documentation from the financial institution.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

Published Electronically: *August 21, 2007*

7380.0277 MARKET CONSIDERATIONS.

Subpart 1. **Market adjustments.** If the authority determines that market conditions are such that interest rates calculated under part 7380.0272 are noncompetitive, the authority has the option to establish a temporary market adjustment discount in addition to the other interest rate discounts established under part 7380.0272.

Subp. 2. **Suspension of loans.**

A. The executive director, acting on behalf of the authority, shall suspend offering loans if it is determined that there are extreme or unusual events impacting the bond market and that to continue making loans under existing terms, conditions, and interest rates would be detrimental to the authority's bondholders or the financial viability of the fund.

B. If loans are suspended under item A, the authority shall have the option to resume making loans under existing criteria or reset the criteria and the means by which it will determine loan terms, conditions, and interest rates that will be offered.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0280 [Repealed, L 2020 c 115 art 1 s 17]

Published Electronically: *November 16, 2020*

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 authority 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.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

Published Electronically: *August 21, 2007*

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*

Published Electronically: *August 21, 2007*

7380.0295 RELEASE OF FUNDS.

Subpart 1. **In general.** 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. Subject to the availability of funds and appropriate documentation of incurred costs, disbursements to the borrower must be made after the following occurs:

A. the loan closing has been completed; and

B. the borrower has submitted a request for payment of incurred, eligible costs on forms provided by the authority.

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 including, but not limited to, a default on any general obligation bond. The authority reserves the right to suspend or terminate financial assistance 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:

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

(2) the borrower fails to comply with the requirements of the act, Minnesota Statutes, section 446A.081, parts 7380.0252 to 7380.0297, the loan agreement, or the bonds or promissory note and security agreement issued by the borrower to the authority;

(3) the borrower fails to submit documentation that eligible costs have been incurred;
or

(4) the borrower fails to submit required compliance reports including, but not limited to, annual audits.

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 or disallowed 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.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

Published Electronically: *August 21, 2007*

7380.0296 PENALTIES FOR DEFAULT.

Subpart 1. **Penalty for late payment.** If a borrower fails to make a payment in the amount and at the times prescribed by the authority, and fails to remedy the default within five business days after the payment due date, the authority shall charge the borrower the lesser of 18 percent per annum, based on 30-day months and a 360-day year or the highest interest rate allowed by law, on the unpaid principal amount.

Subp. 2. **Penalty for material noncompliance.** If the authority notifies a borrower that the borrower is not in compliance with the loan conditions provided in parts 7380.0252 to 7380.0297, the borrower shall have three months from the date of notification to return to compliance or provide a written plan to the authority for returning to compliance. Upon submission of a plan by the borrower, the authority shall either accept or reject the plan. A borrower's failure to return to compliance or to provide an acceptable plan, or failure to return to compliance within the time periods specified in an accepted plan, shall result in an immediate increase in the interest rate on the loan by eliminating all interest rate discounts that were applied in determining the interest rate under part 7380.0272, subpart 3. If the authority determines 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 notification of noncompliance by the authority.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

Published Electronically: *August 21, 2007*

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 the 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 acceptable to the authority.

Subp. 3. **Audits.** Except as provided in subpart 4, a municipal borrower shall provide to the authority acceptable reports of independent annual audits for the term of the loan. Audit reports

must be submitted within 30 days after the completion of the audit but no later than nine months after the end of the audit period. The audits must be conducted in accordance with generally accepted government auditing standards and, where applicable, in compliance with the Single Audit Act 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, as amended from time to time. A borrower pledging a general obligation bond shall list the debt as a general obligation debt of the borrower in its audit report. A borrower pledging a revenue bond shall list the debt as revenue debt in its audit report.

Subp. 4. Waiver of audit requirements.

A. Beginning in the calendar year following the final disbursement of loan funds, the borrower may request a waiver from the authority of the annual independent audit. A waiver shall be granted by the authority if the following conditions are met:

- (1) the borrower submits a request in writing;
- (2) the total outstanding balance of all authority loans are less than \$300,000 or such other amount acceptable to the agencies that rate the authority's debt;
- (3) independent annual audits have been provided as required;
- (4) loan repayments have been made to the authority on time;
- (5) revenues are sufficient to repay debt and operate and maintain the system; and
- (6) the borrower is in compliance with all terms and conditions of the loan agreements.

B. A waiver provided to a borrower shall be revoked by the authority if any of the following conditions occur:

- (1) failure to make payments when due;
- (2) failure to submit, within 12 months of the end of the reporting year, an annual financial report as required by the Office of the State Auditor pursuant to Minnesota Statutes, section 6.47, including operating statements from the enterprise funds and any future independent audits completed for other purposes; or
- (3) failure to comply with all terms and conditions of the loan agreements.

C. The waiver shall be suspended by the authority when the authority issues a new loan to the borrower.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *22 SR 397; 32 SR 321*

Published Electronically: *August 21, 2007*

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

Published Electronically: *August 21, 2007*

7380.0310 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0320 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0330 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0340 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0350 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0360 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0370 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

7380.0380 MR 1995 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]
Published Electronically: *August 21, 2007*

CLEAN WATER REVOLVING FUND

7380.0400 PURPOSE.

The clean water revolving fund provides loans and other forms of financial assistance to eligible applicants to plan, design, and construct municipal wastewater or storm water systems, or nonpoint source pollution control. Under the provisions of the act and Minnesota Statutes, section 446A.07, the authority receives capitalization grants from the United States Environmental Protection Agency and is responsible for managing the fund in perpetuity, including making loans to eligible borrowers and receiving debt service payments. Parts 7380.0400 to 7380.0480 provide for the authority's administration of its responsibilities under Minnesota Statutes, section 446A.07. The Pollution Control Agency also has administrative responsibilities under Minnesota Statutes, section 446A.07, including determining project priorities and approving projects prior to the award of financial assistance by the authority. Parts 7077.0100 to 7077.0292 provide for the administration of the Pollution Control Agency's responsibilities.

Statutory Authority: *MS s 446A.07; 446A.071; 446A.081; 446A.11*

History: *13 SR 2155; 18 SR 614; 32 SR 321; L 2008 c 277 art 3 s 4*

Published Electronically: *October 10, 2008*

7380.0410 Subpart 1. [Repealed, 32 SR 321]

Subp. 2. [Repealed, 32 SR 321]

Subp. 3. [Repealed, 32 SR 321]

- Subp. 4. [Repealed, 32 SR 321]
 - Subp. 5. [Repealed, 32 SR 321]
 - Subp. 6. [Repealed, 32 SR 321]
 - Subp. 7. [Repealed, 32 SR 321]
 - Subp. 8. [Repealed, 32 SR 321]
 - Subp. 9. [Repealed, 32 SR 321]
 - Subp. 10. [Repealed, 32 SR 321]
 - Subp. 11. [Repealed, 32 SR 321]
 - Subp. 12. [Repealed, 32 SR 321]
 - Subp. 12a. [Repealed, 32 SR 321]
 - Subp. 13. [Repealed, 32 SR 321]
 - Subp. 14. [Repealed, 32 SR 321]
 - Subp. 15. [Repealed, 32 SR 321]
 - Subp. 16. [Renumbered as Subp. 12a, 18 SR 614]
 - Subp. 17. [Repealed, 32 SR 321]
 - Subp. 18. [Repealed, 32 SR 321]
 - Subp. 19. [Repealed, 32 SR 321]
 - Subp. 20. [Repealed, 32 SR 321]
- Published Electronically:** *August 21, 2007*

7380.0420 [Repealed, 32 SR 321]

Published Electronically: *August 21, 2007*

7380.0422 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 that describes the intended uses of the amounts in the fund in a particular fiscal year. The intended use plan shall identify:

A. projects listed in the fundable range on the prior year's intended use plan that met the application requirements in part 7380.0425 and were certified by the Pollution Control Agency as provided in part 7077.0281 but did not receive a loan award;

B. new projects meeting the eligibility requirements in subpart 2 which are in the fundable range as determined under subpart 3;

C. the base discount for interest rates on loans; and

D. the other eligible activities to be funded as provided in the act and Minnesota Statutes, section 446A.07, and the amounts to be allocated for each.

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 Pollution Control Agency as provided in part 7077.0115; 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) a project cost estimate and the requested loan amount; and

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

Subp. 3. **Fundable range.** Eligible projects shall be listed on the intended use plan in order of their priority on the project priority list maintained by the Pollution Control Agency as provided in part 7077.0115, beginning first with the projects identified in subpart 1, item A, and, secondly, with the projects meeting the requirements in subpart 1, item B. The authority shall identify the fundable range based on the amount determined to be available for loans.

Subp. 4. **Amendments to intended use plan.** If the authority determines that sufficient funds are available and projects meet the eligibility criteria in subpart 2, the authority has the option to amend the intended use plan to place additional projects in the fundable range.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0425 APPLICATIONS.

Subpart 1. **Timing.** Applicants whose projects are listed in the fundable range on the intended use plan as described in part 7380.0422 must submit the following within six months after the date the authority adopts the intended use plan or an amendment to the intended use plan:

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

B. plans and specifications for construction projects to the Pollution Control Agency as provided in part 7077.0274.

Subp. 2. **Complete application.** An application must contain the required forms, data, exhibits, and documentation for the authority to determine that:

A. the financing of the project is fully assured;

B. the applicant has the financial capability to repay the loan based on the authority's analysis of user charges, special assessments, 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, planned capital expenditures, and other information requested by the authority to make an informed determination on the creditworthiness of the applicant;

C. the applicant has provided the assurances, certifications, and resolutions necessary to comply with the various laws and regulations applicable to the fund; and

D. adequate collateral is being provided by the applicant to secure the loan.

Subp. 3. **Evaluation of applications.** The executive director and staff shall evaluate applications for projects certified by the Pollution Control Agency to determine the applicant's capacity to comply with parts 7380.0400 to 7380.0480, the act, Minnesota Statutes, section 446A.07, the loan agreement, and the covenants of the debt security that will be issued. When the Pollution Control Agency'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. 4. **Rejection of application.** The authority or executive director on behalf of 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 from the Pollution Control Agency under part 7077.0281;

B. failure of the applicant to submit a complete application as provided in subpart 2;

C. failure of the applicant to develop and document dedicated sources of revenue sufficient to ensure debt service payment of the loan to the authority 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 wastewater system for the term of the loan;

E. failure of the applicant to demonstrate creditworthiness sufficient to repay the authority debt or adequately collateralize the loan;

F. failure of the applicant to demonstrate its capacity to comply with parts 7380.0400 to 7380.0480, the act, Minnesota Statutes, section 446A.07, the loan agreement, and the covenants of the debt security; or

G. failure of the applicant to correct a default condition on a prior loan with the authority.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0430 LOAN TERMS AND CONDITIONS.

Subpart 1. **In general.** Subject to the availability of funds, the authority shall provide loans or other financial assistance for eligible costs of projects listed in the fundable range on the intended use plan, which are not rejected for any of the reasons listed in part 7380.0425, subpart 4. The act, other applicable federal laws and regulations, Minnesota Statutes, Minnesota Rules, including parts 7380.0400 to 7380.0480, the capitalization grant, and the authority's basic bond resolution and series bond resolution, all as amended from time to time, govern the terms and conditions of the loan agreement issued by the authority. All borrowers shall issue a general obligation bond to the authority as debt security for the loan agreement. The borrower's authorizing resolution for issuance of debt to the authority shall acknowledge the primacy of the terms and conditions of the loan agreement.

Subp. 2. **Borrowers pledging general obligation bonds.** A borrower providing a general obligation 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 bonds to the authority.

A. The loan must be fully amortized over a period not to exceed 20 years. In no case may the term of the loan exceed the design life of the project being financed. If treatment works have been segmented or phased, the debt service payment requirements of this subpart apply to each phase or segment of the project.

B. The borrower shall designate and maintain, for the term of the loan, dedicated sources of revenue sufficient to fully amortize the loan and to fully provide for the operation and maintenance of the wastewater 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 wastewater system for the full term of the loan.

E. The borrower shall begin making interest payments on the loan no later than one year after approval of the loan. The principal payments must begin no later than 18 months after the approval of the loan or one year after project completion as estimated in the application, whichever is earlier. Principal and interest payments must be made in the amounts and at the times stated by the authority in the loan agreement. Interest accrues immediately on funds disbursed to the borrower by the authority.

F. Throughout the life of the loan the borrower shall, upon request of the authority:

(1) update pertinent information contained in their original application;

(2) attest that such information does not contain any untrue statement of material fact;

and

(3) authorize the authority to use the information to meet its continuing disclosure obligations.

Subp. 3. [Repealed, 32 SR 321]

Subp. 4. [Repealed, 32 SR 321]

Subp. 5. [Repealed, 32 SR 321]

Statutory Authority: *MS s 446A.07; 446A.071; 446A.081; 446A.11*

History: *13 SR 2155; 18 SR 614; 32 SR 321*

Published Electronically: *August 21, 2007*

7380.0440 Subpart 1. [Repealed, 32 SR 321]

Subp. 2. [Repealed, 32 SR 321]

Subp. 3. [Repealed, 32 SR 321]

Subp. 4. [Repealed, 32 SR 321]

Subp. 5. [Repealed, 32 SR 321]

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

Published Electronically: *August 21, 2007*

7380.0442 INTEREST RATE DETERMINATION.

Subpart 1. **In general.**

A. In general, the rate of interest on a loan must be based on the principal redemption schedule of the loan, the appropriate bond yield scale identified in subpart 2, and the applicable interest rate discounts identified in subpart 3.

B. The interest rate on a loan must be set based on the date that the authority receives from the applicant a formal request to proceed with the loan agreement. This must be after the authority has received all of the following:

- (1) a complete application;
- (2) project certification by the Pollution Control Agency; and
- (3) documentation of as-bid costs.

C. In no case may the interest rate on a loan be less than one percent.

D. For loans funded in whole or in part with proceeds of authority bonds, the rate of interest on those loans must not exceed a rate which results in the yield on the loan being materially higher than the yield on the bonds as required and defined in the Internal Revenue Code of 1986, as amended, and the regulations and interpretations of the United States Department of Treasury

promulgated with respect thereto, including and without limitation Code of Federal Regulations, title 26, section 1.148(2)(d).

Subp. 2. **Bond yield scale.** The bond yield scale used in calculating the loan rate is the greater of the authority scale, if authority bond proceeds are available, or the market scale, as described in items A and B.

A. For loans secured with a tax-exempt general obligation bond, the rate must be based on the greater of the Aaa market scale or the unadjusted authority scale.

B. For loans secured with a taxable general obligation bond, the rate must be based on the greater of the Aa market scale or the authority scale adjusted for the difference between the Aaa market scale and the Aa market scale.

Subp. 3. **Interest rate discounts.** Interest rate discounts must be provided as described in items A and B unless item C applies.

A. Borrowers are eligible for a base discount as determined by the authority in part 7380.0422, subpart 1, item C.

B. Borrowers with a project service area population under 2,500 must receive additional discounts on loan amounts up to \$20,000 per household as provided in subitems (1) and (2).

(1) A borrower must receive an interest rate discount of 50 basis points 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.

(2) A borrower must receive an interest rate discount based on its estimated average annual residential system cost per household after completion of the project. If the estimated average annual residential cost per household, as a percentage of median household income of the borrower, is greater than:

- (a) 2.00 percent, the borrower must receive a discount of 150 basis points;
- (b) 1.75 percent but less than 2.00 percent, the borrower must receive a discount of 125 basis points;
- (c) 1.50 percent but less than 1.75 percent, the borrower must receive a discount of 100 basis points;
- (d) 1.25 percent but less than 1.50 percent, the borrower must receive a discount of 75 basis points; or
- (e) 1.00 percent but less than 1.25 percent, the borrower must receive a discount of 50 basis points.

C. For loans with projects involving a significant wastewater contributor, the interest rate discounts provided in items A and B must not be applied unless a significant wastewater contributor agreement is in place.

Subp. 4. **Demographic data.** For the purpose of calculating interest rate discounts in subpart 3, the data used to determine the population and the median household income of the borrower must be that which most accurately measures the current population and median household income of the project's service area.

If there is reason to believe that the United States Census data or the data from the state demographer is not a current, accurate representation of the median household income or population of the project's service area, the borrower may document the reasons why the data is not an accurate representation, and obtain additional information regarding median household income or population of the project's 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 and median household income of the project's service area, the authority shall update the demographic data to reflect the most current and accurate figures.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0445 MARKET CONSIDERATIONS.

Subpart 1. **Market adjustments.** If the authority determines that market conditions are such that interest rates calculated under part 7380.0442 are noncompetitive, the authority has the option to establish a temporary market adjustment discount in addition to the other interest rate discounts established under part 7380.0442.

Subp. 2. Suspension of loans.

A. The executive director, acting on behalf of the authority, shall suspend offering loans if it is determined that there are extreme or unusual events impacting the bond market and that to continue making loans under existing terms, conditions, and interest rates would be detrimental to the authority's bondholders or the financial viability of the fund.

B. If loans are suspended under item A, the authority shall have the option to resume making loans under existing criteria or reset the criteria and the means by which it will determine loan terms, conditions, and interest rates that will be offered.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

Published Electronically: *August 21, 2007*

7380.0450 OTHER FINANCIAL ASSISTANCE.

In addition to the loans provided in parts 7380.0430 to 7380.0442, the authority may provide other forms of financial assistance as provided in the act and in Minnesota Statutes, section 446A.07, subdivision 8. The authority shall determine when other forms of financial assistance are appropriate based on existing financial conditions, the impact on the clean 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.07; 446A.081; 446A.11*

History: *13 SR 2155; 32 SR 321; L 2008 c 277 art 3 s 4*

Published Electronically: *October 10, 2008*

7380.0460 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.07; 446A.081; 446A.11*

History: *13 SR 2155; 32 SR 321*

Published Electronically: *August 21, 2007*

7380.0470 RELEASE OF FUNDS.

Subpart 1. **In general.** 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. Subject to the availability of funds and appropriate documentation of incurred costs, disbursements to the borrower must be made after the following occurs:

A. the loan closing has been completed; and

B. the borrower has submitted a request for payment of incurred, eligible costs on forms provided by the authority.

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 including, but not limited to, a default on any general obligation bond.

The authority reserves the right to suspend or terminate financial assistance 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:

(1) the commissioner of the Pollution Control Agency requests disbursements be withheld or disallowed as provided in part 7077.0292;

(2) the borrower fails to comply with the requirements of the act, Minnesota Statutes, section 446A.07, parts 7380.0400 to 7380.0480, the loan agreement, or the bonds or promissory note and security agreement issued by the borrower to the authority;

(3) the borrower fails to submit documentation that eligible costs have been incurred;
or

(4) the borrower fails to submit required compliance reports including, but not limited to, annual audits.

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 or disallowed 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.07; 446A.081; 446A.11*

History: *13 SR 2155; 32 SR 321*

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7380.0475 PENALTIES FOR DEFAULT.

Subpart 1. **Penalty for late payment.** If a borrower fails to make a payment in the amount and at the times prescribed by the authority, and fails to remedy the default within five business days after the payment due date, the authority shall charge the borrower the lesser of 18 percent per annum, based on 30-day months and a 360-day year, or the highest interest rate allowed by law, on the unpaid principal amount.

Subp. 2. **Penalty for material noncompliance.** If the authority notifies a borrower that the borrower is not in compliance with the loan conditions provided in parts 7380.0400 to 7380.0480, the borrower shall have three months from the date of notification to return to compliance or provide a written plan to the authority for returning to compliance. Upon submission of a plan by the borrower, the authority shall either accept or reject the plan. A borrower's failure to return to compliance or to provide an acceptable plan, or failure to return to compliance within the time periods specified in an accepted plan, shall result in an immediate increase in the interest rate on the loan by eliminating all interest rate discounts that were applied in determining the interest rate under part 7380.0442, subpart 3. If the authority determines 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 notification of noncompliance by the authority.

Statutory Authority: *MS s 446A.07; 446A.081; 446A.11*

History: *32 SR 321*

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7380.0480 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. 1a. **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 the 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 acceptable to the authority.

Subp. 2. **Audits.** Except as provided in subpart 3, a municipal borrower shall provide to the authority acceptable reports of independent annual audits for the term of the loan. Audit reports must be submitted within 30 days after the completion of the audit but no later than nine months after the end of the audit period. The audits must be conducted in accordance with generally accepted government auditing standards and, where applicable, in compliance with the Single Audit Act 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, as amended from time to time. A borrower pledging a general obligation bond shall list the debt as a general obligation debt of the borrower in its audit report.

Subp. 3. **Waiver of audit requirements.**

A. Beginning in the calendar year following a final disbursement of loan funds, a borrower may request a waiver from the authority of the annual independent audit. A waiver must be granted by the authority if the following conditions are met:

- (1) the borrower submits a request in writing;
- (2) the total outstanding balance of all authority loans are less than \$300,000 or such other amount acceptable to the agencies that rate the authority's debt;
- (3) independent annual audits have been provided as required;
- (4) loan repayments have been made to the authority on time;
- (5) revenues are sufficient to repay debt and operate and maintain the system; and
- (6) the borrower is in compliance with all terms and conditions of the loan agreement.

B. A waiver provided to a borrower shall be revoked by the authority if any of the following conditions occur:

- (1) failure to make payments when due;
- (2) failure to submit, within 12 months of the end of the reporting year, an annual financial report as required by the Office of the State Auditor pursuant to Minnesota Statutes, section 6.47, including operating statements from the enterprise funds and any future independent audits completed for other purposes; or
- (3) failure to comply with all terms and conditions of the loan agreement.

C. The waiver shall be suspended by the authority when the authority issues a new loan to the borrower.

Statutory Authority: *MS s 446A.07; 446A.071; 446A.081; 446A.11*

History: *13 SR 2155; 18 SR 614; 32 SR 321*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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