

CHAPTER 446A

PUBLIC FACILITIES AUTHORITY

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446A.01 MINNESOTA PUBLIC FACILITIES AUTHORITY ACT.

Sections 446A.01 to 446A.09 may be cited as the "Minnesota public facilities authority act."

History: 1987 c 386 art 3 s 18

446A.02 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of this chapter, the terms in this section have the meanings given them.

Subd. 1a. **Agency.** "Agency" means the Minnesota pollution control agency.

Subd. 2. **Authority.** "Authority" means the Minnesota public facilities authority.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of trade and economic development.

Subd. 4. **Federal Water Pollution Control Act.** "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1251 et seq.

Subd. 5. **Governmental unit.** "Governmental unit" means a state agency, home rule charter or statutory city, county, sanitary district, or other governmental subdivision.

Subd. 6. **Project.** "Project" means the acquisition, construction, improvement, expansion, repair, or rehabilitation of all or part of any structure, facility, or equipment necessary for a wastewater treatment system or water supply system.

History: 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 3 s 19; 1989 c 354 s 3; 1994 c 632 art 2 s 40,41

446A.03 MINNESOTA PUBLIC FACILITIES AUTHORITY.

Subdivision 1. **Membership.** The Minnesota public facilities authority consists of the commissioner of trade and economic development, the commissioner of finance, the commissioner of the pollution control agency, the commissioner of agriculture, and the commissioner of health.

Subd. 2. **Chair; other officers.** The commissioner of trade and economic development shall serve as the chair and chief executive officer of the authority. The authority may elect other officers as necessary from its members.

Subd. 3. [Repealed, 1994 c 632 art 2 s 67]

Subd. 3a. **Delegation.** In addition to any powers to delegate that members of the authority have as commissioners, they may delegate to the commissioner of trade and economic development their responsibilities as members of the authority for reviewing and approving financing of eligible projects that have been certified to the authority.

Subd. 4. **Board actions.** A majority of the authority, excluding vacancies, constitutes a quorum to conduct its business, to exercise its powers, and for all other purposes.

Subd. 5. **Executive director.** The commissioner shall employ, with the concurrence of the authority, an executive director. The director shall perform duties that the authority may require in carrying out its responsibilities.

Subd. 6. **Administrative services.** The commissioner shall provide administrative services to the authority.

Subd. 7. **Personal liability.** Members and officers of the authority are not liable personally for any debt or obligation of the authority.

History: 1987 c 186 s 15; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 3 s 20; 1991 c 238 art 1 s 16; 1993 c 163 art 1 s 30; 1993 c 327 s 17; 1994 c 632 art 2 s 42,43

446A.04 POWERS; DUTIES.

Subdivision 1. **Bylaws; rules.** The authority shall adopt bylaws for its organization and internal management. The commissioner may adopt rules covering the authority's operations, properties, and facilities.

Subd. 2. **Power to sue; enter contracts.** The authority may sue and be sued. The authority may make and enter into contracts, leases, and agreements necessary to perform its duties and exercise its powers.

Subd. 3. **Gifts; grants.** The authority may apply for, accept, and disburse gifts, grants, loans, or other property from the United States, the state, private sources, or any other source for any of its purposes. Money received by the authority under this subdivision must be deposited in the state treasury and is appropriated to the authority to carry out its duties.

Subd. 4. **Contract for services.** The authority may retain or contract for the services of accountants, financial advisors, and other consultants or agents needed to perform its duties and exercise its powers.

Subd. 5. **Fees.** (a) The authority may set and collect fees for costs incurred by the authority for audits, arbitrage accounting, and payment of fees charged by the state board of investment. The authority may also set and collect fees for costs incurred by the commissioner and the pollution control agency, including costs for personnel and administrative services, for its financings and the establishment and maintenance of reserve funds. Fees charged directly to borrowers upon executing a loan agreement must not exceed one-half of one percent of the loan amount. Servicing fees assessed to loan repayments must not exceed two percent of the loan repayment. The disposition of fees collected for costs incurred by the authority is governed by section 446A.11, subdivision 13. Fees collected under this subdivision for costs incurred by the commissioner or the pollution control agency must be credited to the general fund.

(b) The authority shall annually report to the chairs of the finance and appropriations committees of the legislature on:

(1) the amount of fees collected under this subdivision for costs incurred by the authority;

(2) the purposes for which the fee proceeds have been spent; and

(3) the amount of any remaining balance of fee proceeds.

Subd. 6. **Property.** The authority may acquire, encumber, hold, and convey through lease, purchase, gift, or otherwise, any real or personal property.

Subd. 7. **In general.** The authority has all the powers necessary and convenient to carry out its duties under sections 446A.05, subdivision 1, 446A.051, and 446A.12 to 446A.20.

History: 1987 c 386 art 3 s 21; 1988 c 546 s 1,2; 1992 c 601 s 11

446A.05 PROJECT LOANS.

Subdivision 1. **Loans and loan purchases.** The authority may make and contract to make loans to governmental units to finance projects that the governmental unit may

construct or acquire or may acquire or contract to acquire notes and bonds issued by governmental units to finance those projects. A loan may not be used to pay current expenses or obligations, except for temporary financing. A loan made by the authority must be secured by notes or bonds of the borrowing governmental unit.

Subd. 2. Rules. The commissioner may adopt rules governing loans awarded under this section.

History: 1987 c 386 art 3 s 22; 1988 c 546 s 3

446A.051 PROJECT FINANCIAL ASSISTANCE.

The authority shall assist eligible governmental units in determining what grants or loans under sections 446A.06 and 446A.07 to apply for to finance projects and the manner in which the governmental unit will pay for its portion of the project cost. The authority shall review the proposed financing for each project certified by the agency to ascertain whether or not: (1) total financing of a project is assured; and (2) the governmental unit's financial plan to pay for its portion of the project cost is feasible.

History: 1988 c 546 s 4

446A.06 INDEPENDENT WASTEWATER TREATMENT GRANTS.

Subdivision 1. Award of grants. The authority shall award independent state grants to municipalities selected by the pollution control agency upon certification by the agency that the municipalities' projects and applications have been reviewed and approved by the agency in accordance with sections 116.16 to 116.18 and agency rules.

Subd. 2. Rules. The commissioner shall adopt rules containing procedures for the administration of the authority's duties as provided in subdivision 1.

History: 1987 c 386 art 3 s 23

446A.07 WATER POLLUTION CONTROL REVOLVING FUND.

Subdivision 1. Establishment of fund. The authority shall establish a water pollution control revolving fund to provide loans for the purposes and eligible costs authorized under title VI of the Federal Water Pollution Control Act. The fund must be credited with repayments.

Subd. 2. State funds. A state matching fund is established to be used in compliance with federal matching requirements specified in the Federal Water Pollution Control Act. A state grant and loan fund is established to provide grants and loans to governmental units for the planning and construction of treatment works as specified in section 116.16, subdivision 2, paragraphs (6) and (7).

Subd 3. Capitalization grant agreement. The authority shall enter an agreement with the administrator of the United States Environmental Protection Agency to receive capitalization grants for the revolving fund. The authority may exercise powers necessary to comply with the requirements specified in the agreement, which must be in compliance with the Federal Water Pollution Control Act.

Subd. 4. Intended use plan. The pollution control agency shall annually prepare and submit to the United States Environmental Protection Agency an intended use plan. The plan must identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment and storm water projects and all other eligible activities to be funded during the fiscal year. Information regarding eligible activities must be submitted to the pollution control agency by the appropriate state agency or department within 30 days of written notification by the pollution control agency. The pollution control agency may not submit the plan until it has received the review and comment of the authority or until 30 days have elapsed since the plan was submitted to the authority, whichever occurs first.

Subd. 5. Applications. Applications by municipalities and other entities identified in the annual intended use plan for loans from the water pollution control revolving fund must be made to the authority on forms requiring information prescribed by the

rules of the agency adopted under this section. The authority shall send the applications to the agency within ten days of receipt. The director shall certify to the authority those applications that appear to meet the criteria set forth in the Federal Water Pollution Control Act, this section, and rules of the agency.

Subd. 6. Award and terms of loans. The authority shall award loans to those municipalities and other entities certified by the pollution control agency or shall provide funding for the appropriate state agency or department to make loans for eligible activities certified by the pollution control agency provided the use of funds and the terms and conditions of the loans are in conformance with the federal Water Pollution Control Act, this section, and rules of the pollution control agency and the authority adopted under this section.

Subd. 7. Loan conditions. When making loans from the revolving fund, the authority shall comply with the conditions of the Federal Water Pollution Control Act, including:

(a) Loans must be made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years.

(b) The annual principal and interest payments must begin no later than one year after completion of a project. Loans must be fully amortized no later than 20 years after project completion.

(c) A loan recipient shall establish a dedicated source of revenue for repayment of the loan.

(d) The fund must be credited with all payments of principal and interest on all loans.

Subd. 8. Other uses of revolving fund. The water pollution control revolving fund may be used as provided in title VI of the Federal Water Pollution Control Act, including the following uses:

(1) to buy or refinance the debt obligation of governmental units for treatment works where debt was incurred and construction begun after March 7, 1985, at or below market rates;

(2) to guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

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

(4) to provide loan guarantees, loans, or set-aside for similar revolving funds established by a governmental unit other than state agencies, or state agencies under sections 17.117, 103F.725, subdivision 1a, 116J.403, 116J.617, and 462A.05; provided that no more than \$2,000,000 of the balance in the fund may be used for the small cities block grant program under section 116J.403 and the tourism loan program under section 116J.617, taken together, and no more than \$2,000,000 of the balance in the fund may be used for home improvement loan programs under section 462A.05;

(5) to earn interest on fund accounts; and

(6) to pay the reasonable costs incurred by the authority and the agency of administering the fund and conducting activities required under the federal Water Pollution Control Act, including water quality management planning under section 205(j) of the act and water quality standards continuing planning under section 303(e) of the act.

Amounts spent under clause (6) may not exceed the amount allowed under the Federal Water Pollution Control Act.

Subd. 9. Payments. Payments from the fund must be made in accordance with the applicable state and federal law governing the payments, except that for projects other than those funded under section 17.117, 103F.725, subdivision 1a, 116J.403, 116J.617, or 462A.05, no payment for a project may be made to a governmental unit until and unless the authority has determined the total estimated cost of the project and ascertained that financing of the project is assured by:

(1) a loan authorized by state law or the appropriation of proceeds of bonds or other money of the governmental unit to a fund for the construction of the project; and

(2) an irrevocable undertaking, by resolution of the governing body of the governmental unit, to use all 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 the proceeds of additional bonds to be issued by the governmental unit.

Subd. 10. Rules of the authority. The commissioner shall adopt rules containing procedures for the administration of the authority's duties as provided in this section, including loan interest rates, the amounts of loans, and municipal financial need.

Subd. 11. Rules of the agency. The agency shall adopt rules relating to the procedure for preparation of the annual intended use plan and other matters that the agency considers necessary for proper loan administration. Eligible activities are those required under the federal Water Pollution Control Act of 1987, as amended.

History: 1987 c 386 art 3 s 24; 1989 c 354 s 4; 1990 c 564 s 4; 1992 c 601 s 12; 1994 c 465 art 1 s 51; 1994 c 632 art 2 s 44-48

446A.071 WASTEWATER INFRASTRUCTURE FUNDING PROGRAM.

Subdivision 1. Establishment of the program. (a) The authority shall establish the wastewater infrastructure funding program to provide supplemental assistance, as provided in rules of the authority, to municipalities that receive loans or other assistance from the water pollution control revolving fund under section 446A.07 for wastewater treatment projects excluding storm water projects.

(b) The authority may secure funds for the wastewater infrastructure funding program through state appropriations; any source identified in section 446A.04 which may be designated by the authority for the purposes of this section; and any federal funding appropriated by Congress that may be used for the purposes of this section.

(c) The authority may set aside up to ten percent of the money appropriated to the wastewater infrastructure funding program for wastewater projects that are necessary to accommodate economic development projects.

Subd. 2. Supplemental assistance. The authority may provide supplemental assistance under this section in the form of loans; write-down of principal, interest, or both; or direct grants, as determined by authority rules. The amount and form of the supplemental assistance must be based on the authority's determination of the financial capability of the municipality, the municipality's eligibility to qualify for other grant programs, and the source of funds.

Subd. 3. Program administration. The authority may provide supplemental assistance to municipalities demonstrating financial need whose applications have been certified by the commissioner of the pollution control agency under section 116.182. The authority shall provide supplemental assistance according to the priority ranking established by the pollution control agency except for amounts set aside under subdivision 1, paragraph (c). The authority shall assist municipalities in securing other funding from appropriate sources. The authority shall not award financial assistance under this section unless it determines that the total project financing will be in place.

Subd. 4. Funding level. (a) The authority may provide supplemental assistance for essential project components and costs as certified by the commissioner of the pollution control agency under section 116.182, subdivision 4, only if the loan or other financial assistance under section 446A.07 is not sufficient to provide financing for that portion of the project. The authority shall take into account the ability of significant wastewater contributors to pay their fair share of the total project costs in determining eligibility of costs for supplemental assistance.

(b) When feasible, the authority shall coordinate and leverage assistance under the wastewater infrastructure funding program with other grant programs for which the municipality is eligible.

(c) Requirements under paragraph (a) do not apply to the economic development set-aside under subdivision 1, paragraph (c).

Subd. 5. Applications. Applications for supplemental assistance must be made to the authority on forms prescribed by the authority and must include information identified in the rules of the authority and the agency. The authority shall forward an application to the commissioner of the pollution control agency within ten days of receipt. The commissioner of the pollution control agency shall review the projects and applications to determine if they meet the criteria set forth in section 116.182 and the agency rules for the program. The commissioner of the pollution control agency shall certify approved applications to the authority under section 116.182.

Subd. 6. Payments. Payments from the wastewater infrastructure funding program must be made in accordance with applicable state and federal laws and rules of the authority governing such payments.

Subd. 7. Rules. The commissioner of trade and economic development shall adopt rules establishing procedures for the administration of the wastewater infrastructure funding program. The rules must include:

- (1) procedures for the administration of the financial assistance program, including application procedures;
- (2) provisions establishing eligible uses of funds, forms of assistance, payments, and reporting requirements; and
- (3) criteria for determining the amount of supplemental assistance, which must include consideration of: social, economic, and demographic considerations; sewer service charges; financial management; and the ability of significant wastewater contributors to pay their fair share of the costs without supplemental assistance.

Subd. 8. Transfer of appropriations. As the projects in the programs specified under section 116.18 are completed, any amounts remaining from appropriations for the programs are appropriated to the authority for the wastewater infrastructure funding program, provided this use does not violate applicable provisions of any bond or note resolutions, indentures, or other instruments, contracts, or agreements associated with the source of the funds.

History: 1992 c 601 s 13; 1994 c 632 art 2 s 49

446A.08 [Repealed, 1994 c 632 art 2 s 67]

446A.081 DRINKING WATER REVOLVING FUND.

Subdivision 1. Definitions. (a) For the purposes of this section, the terms in this subdivision have the meanings given them.

- (b) "Act" means the federal Drinking Water Infrastructure Financing Act.
- (c) "Department" means the department of health.

Subd. 2. Establishment of fund. The authority shall establish a drinking water revolving fund to provide loans and other forms of financial assistance authorized by the act, as determined by the authority under the rules adopted under this section for the purposes and eligible costs authorized under the act. The fund must be credited with repayments. The act requires that the fund corpus must be managed so as to be available in perpetuity for the financing of drinking water systems in the state. At a minimum, 15 percent of the funds received each federal fiscal year shall be available solely for providing loans to public water systems which regularly serve fewer than 10,000 individuals.

Subd. 3. State funds. A state matching fund is established to be used in compliance with federal matching requirements specified in the act.

Subd. 4. Capitalization grant agreement. The authority shall enter into an agreement with the administrator of the United States Environmental Protection Agency to receive capitalization grants for the fund. The authority and the department may exercise the powers necessary to comply with the requirements specified in the agreement.

Subd. 5. Intended use plan. The authority shall annually prepare and submit to the United States Environmental Protection Agency an intended use plan. The plan must

identify the intended uses of the amounts available to the drinking water revolving loan fund. The department shall provide a prioritized list of drinking water projects and other eligible activities to be considered for funding by the authority. The plan may be amended by the authority and include additional eligible projects proposed by the department.

Subd. 6. Applications. Applications by municipalities, privately owned public water systems, and eligible entities identified in the annual intended use plan for loans from the fund must be made to the authority on the forms prescribed by the rules of the authority and the rules of the department adopted under this section. The authority shall forward the application to the department within ten days of receipt. The department shall approve those applications that appear to meet the criteria in the act, this section, and the rules of the department or the authority.

Subd. 7. Award and terms of loans. The authority shall award loans to those municipalities, privately owned public water systems, and other eligible entities approved by the department, provided that the applicant is able to comply with the terms and conditions of the authority loan, which must be in conformance with the act, this section, and the rules of the authority adopted under this section.

Subd. 8. Loan conditions. (a) When making loans from the drinking water revolving fund, the authority shall comply with the conditions of the act, including the criteria in paragraphs (b) to (e).

(b) Loans must be made at or below market interest rates, including zero interest loans, for terms not to exceed 20 years.

(c) The annual principal and interest payments must begin no later than one year after completion of the project. Loans must be amortized no later than 20 years after project completion.

(d) A loan recipient must identify and establish a dedicated source of revenue for repayment of the loan, and provide for a source of revenue to properly operate, maintain, and repair the water system.

(e) The fund must be credited with all payments of principal and interest on all loans, except the costs as permitted under section 446A.04, subdivision 5, paragraph (a).

Subd. 9. Other uses of fund. The drinking water revolving loan fund may be used as provided in the act, including the following uses:

(1) to buy or refinance the debt obligations, at or below market rates, of public water systems for drinking water systems, where such debt was incurred after the date of enactment of the act, for the purposes of construction of the necessary improvements to comply with the national primary drinking water regulations under the federal Safe Drinking Water Act;

(2) to purchase or guarantee insurance for local obligations to improve credit market access or reduce interest rates;

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

(4) to provide loans or loan guarantees for similar revolving funds established by a governmental unit or state agency;

(5) to earn interest on fund accounts; and

(6) to pay the reasonable costs incurred by the authority and the department for conducting activities as authorized and required under the act up to the limits authorized under the act.

Subd. 10. Payments. Payments from the fund to borrowers must be in accordance with the applicable state and federal laws governing such payments, except no payment for a project may be made to a borrower until and unless the authority has determined that the total estimated cost of the project and the financing of the project are assured by:

(1) a loan authorized by state law or appropriation of proceeds of bonds or other money of the borrower to a fund for the construction of the project; and

(2) an irrevocable undertaking, by resolution of the governing body of the borrower, to use all 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.

Subd. 11. Rules of the authority. The commissioner of trade and economic development shall adopt rules containing the procedures for the administration of the authority's duties as provided by this section that include: setting of interest rates, which shall take into account the financial need of the applicant; the amount of project financing to be provided; the collateral required for public drinking water systems and for privately owned public water systems; dedicated sources of revenue or income streams to ensure repayment of loans; and the requirements to ensure proper operation, maintenance, and repair of the water systems financed by the authority.

Subd. 12. Rules of the department. The department shall adopt rules relating to the procedures for administration of the department's duties under the act and this section. The department and the commissioner of the department of trade and economic development may adopt a single set of rules for the program.

History: 1994 c 632 art 2 s 50

446A.09 REPORT; AUDIT.

The authority shall report to the legislature and the governor by January 1 of each year. The report must include a complete operating and financial statement covering the authority's operations during the year, including amounts of income from all sources. Books and records of the authority are subject to audit by the legislative auditor in the manner prescribed for state agencies.

History: 1987 c 386 art 3 s 26

446A.10 TRANSFER OF AUTHORITY.

Subdivision 1. Water pollution control grants. (a) The responsibilities of the pollution control agency for the state independent wastewater treatment grant program under section 116.18, subdivision 3a, are transferred on July 1, 1988, to the Minnesota public facilities authority under section 15.039, except that the commissioner of trade and economic development and the commissioner of the pollution control agency shall determine which classified and unclassified positions associated with these responsibilities are transferred.

(b) Any continuing obligation with respect to grants made before September 30, 1984, under Minnesota Statutes 1984, section 116.18, subdivision 2, remains with the pollution control agency.

(c) The pollution control agency shall continue to administer the combined sewer overflow program under section 116.162, and the appropriations for the program.

Subd. 2. Other responsibilities. (a) The responsibilities for the health care equipment loan program under Minnesota Statutes 1986, section 116M.07, subdivisions 7a, 7b, and 7c, are transferred from the Minnesota energy and economic development authority to the Minnesota public facilities authority.

(b) Except as otherwise provided in this paragraph, section 15.039 applies to the transfer of responsibilities. The transfer includes 8-1/2 positions from the financial management division of the department of trade and economic development to the community development division of the department of trade and economic development.

History: 1987 c 186 s 15; 1987 c 312 art 1 s 10 subd 1,26 subd 2; 1987 c 386 art 3 s 28; 1991 c 199 art 2 s 26; 1993 c 163 art 1 s 31; 1993 c 327 s 18

446A.11 PROGRAM ADMINISTRATION.

Subdivision 1. **Powers.** In implementing the purposes and the programs described in this chapter, the authority has the powers in this section.

Subd. 2. **Rules.** It may adopt, amend, and repeal rules, including emergency rules, necessary to effectuate its purposes.

Subd. 3. **Personal property.** It may acquire, hold, and dispose of personal property for its corporate purposes.

Subd. 4. **Real property.** It may acquire real property, or an interest in real property, in its own name, by purchase or foreclosure, where the acquisition is necessary or appropriate to protect a loan in which the authority has an interest and may sell, transfer, and convey the property to a buyer and, in the event the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, may lease the property to a tenant.

Subd. 5. **Notes; mortgages; obligations; sale of.** It may sell, at public or private sale, any note, mortgage or other instrument or obligation evidencing or securing a loan.

Subd. 6. **Insurance.** It may procure insurance against a loss in connection with its property in the amounts, and from the insurers, as may be necessary or desirable.

Subd. 7. **Loan terms; modification.** It may consent, whenever it considers it necessary or desirable in the fulfillment of its purpose, to the modification of the rate of interest, time of payment, installment of principal or interest, or other term, of a contract or agreement to which the authority is a party.

Subd. 8. **Loan payments; interest and amortization.** It may establish and collect reasonable interest and amortization payments on loans, and in connection with them may establish and collect or authorize the collection of reasonable fees and charges or require money to be placed in escrow, sufficient to provide for the payment and security of its bonds, notes, commitments and other obligations and for their servicing, to provide reasonable allowances for or insurance against losses which may be incurred and to cover the cost of issuance of obligations and technical, consultative, and project assistance services.

Subd. 9. **Investments.** (a) It may cause any money not required for immediate disbursement, including the general reserve account, to be invested in direct obligations of or obligations guaranteed as to principal and interest by the United States, or in insured savings accounts, up to the amount of the insurance, in any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or to be deposited in a savings or other account in a bank insured by the federal deposit insurance corporation or to be invested in time certificates of deposit issued by a bank insured by the Federal Deposit Insurance Corporation and maturing within one year or less and in the investments described in section 11A.24, subdivision 4, except clause (d). It may deposit money in excess of the amount insured with security as provided in chapter 118.

(b) Notwithstanding paragraph (a), it may invest and deposit money into accounts established pursuant to resolutions or indentures securing its bonds or notes in investments and deposit accounts or certificates, and with security, agreed upon with the holders or a trustee for the holders.

Subd. 10. **Consultative and technical services.** It may provide general consultative and technical services to assist in financing the entities to which loans may be made. It may enter into agreements or other transactions concerning the receipt or provision of those services.

Subd. 11. **Financial information.** Financial information, including credit reports, financial statements and net worth calculations, received or prepared by the authority regarding an authority loan, financial assistance, or insurance is private data with regard to data on individuals as defined in section 13.02, subdivision 12 and nonpublic data with regard to data not on individuals as defined in section 13.02, subdivision 9.

Subd. 12. **Appropriations; gifts; grants.** The authority may accept appropriations, gifts, grants, bequests, and devises and use or dispose of them for its purposes. All gifts, grants, bequests, and revenues from those sources are appropriated to the authority.

Subd. 13. **Proceeds appropriated to authority.** Proceeds of the authority's bonds, notes, and other obligations; amounts granted or appropriated to the authority for the making or purchase or the insurance or guaranty of loans or for bond reserves; income from investment; money in the funds; and all revenues from loans, fees, and charges of the authority including rentals, royalties, dividends, or other proceeds in connection with technology-related products, energy conservation products, or other equipment are annually appropriated to the authority for the accomplishment of its corporate purposes and must be spent, administered, and accounted for in accordance with the applicable provisions of all bond and note resolutions, indentures, and other instruments, contracts, and agreements of the agency. Notwithstanding section 16A.28, these appropriations are available until expended.

Subd. 14. **General purpose.** The authority may do all things necessary and proper to fulfill its purpose.

History: 1987 c 386 art 3 s 29; 1994 c 632 art 2 s 51

BOND ISSUANCE

446A.12 ISSUANCE OF BONDS.

Subdivision 1. **Bonding authority.** The authority may issue negotiable bonds in a principal amount that the authority determines necessary to provide sufficient funds for achieving its purposes, including the making of loans and purchase of securities, the payment of interest on bonds of the authority, the establishment of reserves to secure its bonds, the payment of fees to a third party providing credit enhancement, and the payment of all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers, but not including the making of grants. Bonds of the authority may be issued as bonds or notes or in any other form authorized by law. The principal amount of bonds issued and outstanding under this section at any time may not exceed \$350,000,000.

Subd. 2. **Refunding of bonds.** The authority may issue bonds to refund outstanding bonds of the authority, to pay any redemption premiums on those bonds, and to pay interest accrued or to accrue to the redemption date next succeeding the date of delivery of the refunding bonds. The authority may apply the proceeds of any refunding bonds to the purchase or payment at maturity of the bonds to be refunded, or to the redemption of outstanding bonds on the redemption date next succeeding the date of delivery of the refunding bonds and may, pending the application, place the proceeds in escrow to be applied to the purchase, retirement, or redemption. Pending use, escrowed proceeds may be invested and reinvested in obligations issued or guaranteed by the state or the United States or by any agency or instrumentality of the state or the United States, or in certificates of deposit or time deposits secured in a manner determined by the authority, maturing at a time appropriate to assure the prompt payment of the principal and interest and redemption premiums, if any, on the bonds to be refunded. The income realized on any investment may also be applied to the payment of the bonds to be refunded. After the terms of the escrow have been fully satisfied, any balance of the proceeds and any investment income may be returned to the authority for use by it in any lawful manner. All refunding bonds issued under this subdivision must be issued and secured in the manner provided by resolution of the authority.

Subd. 3. **Kind of bonds.** Bonds issued under this section must be negotiable investment securities within the meaning and for all purposes of the Uniform Commercial Code, subject only to the provisions of the bonds for registration. The bonds issued may be either general obligations of the authority, secured by its full faith and credit and payable out of any money, assets, or revenues of the authority, subject to the provisions of resolutions or indenture pledging and appropriating particular money, assets, or revenues to particular bonds, or limited obligations of the authority not secured by its full faith and credit and payable solely from specified sources or assets.

Subd. 4. **Resolution and terms of sale.** The bonds of the authority must be authorized by a resolution or resolutions adopted by the authority. The bonds must bear the

date or dates, mature at the time or times, bear interest at a fixed or variable rate, including a rate varying periodically at the time or times and on the terms determined by the authority, or any combination of fixed and variable rates, be in the denominations, be in the form, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States, at the place or places within or without the state, and be subject to the terms of redemption or purchase before maturity as the resolutions or certificates provide. If, for any reason existing at the date of issue of the bonds or existing at the date of making or purchasing any loan or securities from the proceeds or after that date, the interest on the bonds is or becomes subject to federal income taxation, this fact does not affect the validity or the provisions made for the security of the bonds. The authority may make covenants and take or have taken actions that are in its judgment necessary or desirable to comply with conditions established by federal law or regulations for the exemption of interest on its obligations. The authority may refrain from compliance with those conditions if in its judgment this would serve the purposes and policies set forth in this chapter with respect to any particular issue of bonds, unless this would violate covenants made by the authority. The maximum maturity of a bond, whether or not issued for the purpose of refunding, must be 30 years from its date. The bonds of the authority may be sold at public or private sale, at a price or prices determined by the authority; provided that (i) the aggregate price at which an issue of bonds is initially offered by underwriters to investors, as stated in the authority's official statement with respect to the offering, must not exceed by more than three percent the aggregate price paid by the underwriters to the authority at the time of delivery; (ii) the commission paid by the authority to an underwriter for placing an issue of bonds with investors must not exceed three percent of the aggregate price at which the issue is offered to investors as stated in the authority's offering statement; and (iii) the spread or commission must be an amount determined by the authority to be reasonable in the light of the risk assumed and the expenses of issuance, if any, required to be paid by the underwriters.

Subd. 5. Exemption. The notes and bonds of the authority are not subject to section 16B.06.

History: 1988 c 546 s 5; 1989 c 354 s 5; 1990 c 564 s 5; 1991 c 354 art 10 s 10; 1994 c 632 art 2 s 52

446A.13 TENDER OPTION.

An obligation may be issued giving its owner the right to tender or the authority to demand tender of the obligation to the authority or another person designated by it, for purchase at a specified time or times, if the authority has first entered into an agreement with a suitable financial institution obligating the financial institution to provide funds on a timely basis for purchase of bonds tendered. The obligation is not considered to mature on any tender date and the purchase of a tendered obligation is not considered a payment or discharge of the obligation by the authority. Obligations tendered for purchase may be remarketed by or on behalf of the authority or another purchaser. The authority may enter into agreements it considers appropriate to provide for the purchase and remarketing of tendered obligations, including:

(1) provisions under which undelivered obligations may be considered tendered for purchase and new obligations may be substituted for them;

(2) provisions for the payment of charges of tender agents, remarketing agents, and financial institutions extending lines of credit or letters of credit assuring repurchase; and

(3) provisions for reimbursement of advances under letters of credit that may be paid from the proceeds of the obligations or from tax and other revenues appropriated for the payment and security of the obligations and similar or related provisions.

History: 1988 c 546 s 6

446A.14 INTEREST EXCHANGES.

The authority may enter into an agreement with a third party for an exchange of interest rates under this subdivision. With respect to outstanding obligations bearing interest at a variable rate, the authority may agree to pay sums equal to interest at a fixed rate or at a different variable rate determined in accordance with a formula set out in the agreement on an amount not exceeding the outstanding principal amount of the obligations, in exchange for an agreement by the third party to pay sums equal to interest on a similar amount at a variable rate determined according to a formula set out in the agreement. With respect to outstanding obligations bearing interest at a fixed rate or rates, the authority may agree to pay sums equal to interest at a variable rate determined according to a formula set out in the agreement on an amount not exceeding the outstanding principal amount of the obligations in exchange for an agreement by the third party to pay sums equal to interest on a similar amount at a fixed rate or rates set out in the agreement. Subject to any applicable bonds covenants, payments required to be made by the municipality under the swap agreement may be made from amounts secured to pay debt service on the obligations with respect to which the swap agreement was made from any other available source of the authority.

History: 1988 c 546 s 7

446A.15 BOND FUND.

Subdivision 1. Creation and contents. The authority may establish a special fund or funds for the security of one or more or all series of its bonds. The funds must be known as debt service reserve funds. The authority may pay into each debt service reserve fund:

- (1) any money appropriated by the state only for the purposes of the fund;
- (2) the proceeds of sale of bonds to the extent provided in the resolution or indenture authorizing the issuance of them;
- (3) funds directed to be transferred by the authority to the debt service reserve fund; and
- (4) other money made available to the authority from any other source only for the purpose of the fund.

Subd. 2. Use of funds. Except as provided in this section, the money credited to each debt service reserve fund must be used only for the payment of the principal of bonds of the authority as they mature, the purchase of the bonds, the payment of interest on them, or the payment of any premium required when the bonds are redeemed before maturity. Money in a debt service reserve fund must not be withdrawn at a time and in an amount that reduces the amount of the fund to less than the amount the authority determines to be reasonably necessary for the purposes of the fund. However, money may be withdrawn to pay principal or interest due on bonds secured by the fund if other money of the authority is not available.

Subd. 3. Investment. Money in a debt service reserve fund not required for immediate use may be invested in accordance with section 446A.11, subdivision 9, paragraph (b).

Subd. 4. Minimum amount of reserve at issuance. If the authority establishes a debt service reserve fund for the security of any series of bonds, it shall not issue additional bonds that are similarly secured if the amount of any of the debt service reserve funds at the time of issuance does not equal or exceed the minimum amount required by the resolution creating the fund, unless the authority deposits in each fund at the time of issuance, from the proceeds of the bonds, or otherwise, an amount that when added together with the amount then in the fund will be at least the minimum amount required.

Subd. 5. Transfer of excess. To the extent consistent with the resolutions and indentures securing outstanding bonds, the authority may at the close of a fiscal year transfer to any other fund or account from any debt service reserve fund any excess in that reserve fund over the amount determined by the authority to be reasonably necessary for the purpose of the reserve fund.

Subd. 6. **Certification and budget request.** To assure the payment of the principal of and interest on bonds of the authority issued prior to January 1, 1994, and the continued maintenance of all debt service reserve funds created and established for that payment, the authority shall annually determine and certify to the governor, on or before December 1, the following amounts:

(1) the amount then needed to restore each debt service reserve fund securing in whole or in part the payment of principal of and interest on bonds of the authority issued prior to January 1, 1994, to the minimum amount required by the resolution or indenture establishing the fund, but not exceeding the maximum amount of principal and interest to become due and payable in any later year on all bonds issued prior to January 1, 1994, that are then outstanding and secured by the fund; and

(2) the amount determined by the authority to be needed in the immediately ensuing fiscal year, with other funds pledged and estimated to be received during that year, for the payment of the principal and interest due and payable in that year on all then outstanding bonds secured by a debt service reserve fund securing in whole or in part the payment of principal of and interest on bonds of the authority issued prior to January 1, 1994, the amount of which is then less than the minimum amount agreed, but not exceeding the maximum amount of principal and interest to become due and payable in the immediately ensuing fiscal year on bonds prior to January 1, 1994.

The governor shall include in the proposed biennial budget for the following fiscal year, or in a supplemental budget if the biennial budget has previously been approved, the amounts certified by the authority in accordance with this subdivision.

History: 1988 c 546 s 8; 1994 c 632 art 2 s 53

446A.16 MONEY OF THE AUTHORITY.

Subdivision 1. **Functions of state treasurer.** Except as otherwise provided in this section, money of the authority must be paid to the state treasurer as agent of the authority and the treasurer shall not commingle the money with other money. The money in the accounts of the authority must be paid out only on warrants drawn by the commissioner of finance on requisition of the chair of the authority or of another officer or employee as the authority authorizes. Deposits of the authority's money must, if required by the state treasurer or the authority, be secured by obligations of the United States or of the state of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give security for the deposits.

Subd. 2. **Contracts and security.** Notwithstanding the provisions of this section, the authority may, with the approval of the state treasurer, contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of money of the authority or money held in trust or otherwise for the payment of bonds, and to carry out the contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for the deposits. All money paid to the state treasurer as agent of the authority is appropriated to the authority.

Subd. 3. **System of accounts.** Subject to agreements with bondholders, the commissioner of finance shall prescribe a system of accounts.

History: 1988 c 546 s 9

446A.17 NONLIABILITY.

Subdivision 1. **Nonliability of individuals.** No member of the authority or other person executing the bonds is liable personally on the bonds or is subject to any personal liability or accountability by reason of their issuance.

Subd. 2. **Nonliability of state.** The state is not liable on bonds of the authority issued under this chapter and those bonds are not a debt of the state. The bonds must contain on their face a statement to that effect.

History: 1988 c 546 s 10

446A.18 PURCHASE AND CANCELLATION BY AUTHORITY.

Subject to agreements with bondholders that may then exist, the authority may purchase out of funds available for the purpose, bonds of the authority which shall then be canceled, at a price not exceeding the following amounts:

- (1) if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date of the bonds; or
- (2) if the bonds are not redeemable, the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

History: 1988 c 546 s 11

446A.19 STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.

The state pledges and agrees with the holders of bonds issued under sections 446A.051, and 446A.12 to 446A.20 that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the bondholders or in any way impair the rights and remedies of the holders until the bonds, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of bonds issued under sections 446A.051, and 446A.12 to 446A.20.

History: 1988 c 546 s 12

446A.20 RESERVES; FUNDS; ACCOUNTS.

The authority may establish reserves, funds, or accounts necessary to carry out the purposes of the authority or to comply with any agreement made by or any resolution passed by the authority.

History: 1988 c 546 s 13

446A.21 ONCE-THROUGH COOLING CONVERSION LOANS.

Subdivision 1. **Bonds and notes.** (a) The authority shall provide loans, including no-interest loans, to public and private entities for the capital costs incurred for the replacement of once-through cooling systems with environmentally acceptable cooling systems.

(b) The authority may issue its bonds and notes in the manner provided under sections 446A.12 to 446A.20 to provide money needed for the purposes of this section over and above the amount appropriated to it for these purposes. The principal amount of bonds and notes issued and outstanding under this section may not exceed \$40,000,000 at any time. The bonds and notes issued to make loans under this section are not general obligation bonds. Section 446A.15, subdivision 6, does not apply to the bonds and notes. The bonding authority authorized under this section is in addition to the bonding authority authorized under section 446A.12, subdivision 1, and the limitation on the amount of bonding authority imposed under section 446A.12, subdivision 1, does not apply to the bonds issued under this section. The legislature intends not to appropriate money from the general fund to pay for these bonds.

(c) Money appropriated to the authority and money provided under section 446A.04, subdivision 3, for once-through cooling conversion may be used by the authority for debt service on bonds and notes, purchasing insurance, subsidizing below market interest rates, and providing loans under this section.

Subd. 2. **Administration.** (a) An entity may apply to the authority for a loan. Within ten days of receipt, the authority shall submit the application to the commissioner of public service to determine whether the proposed cooling system meets the energy efficiency criteria of the department. The commissioner of public service shall certify to the authority whether the project meets the applicable energy efficiency

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criteria. The commissioner of public service shall adopt rules establishing energy efficiency criteria for replacement cooling systems.

(b) Within the limitation of available funds, the authority may award a loan to a certified entity if the authority determines that the entity has demonstrated the ability to repay the loan under the terms negotiated under subdivision 3.

(c) The authority shall give priority to nonprofit organizations and school districts in making loans.

Subd. 3. Loan conditions. A loan made under this section may be made for up to 100 percent of the cost of once-through cooling system replacement for which the entity is liable. A loan may be made at or below market interest rates and at a term not to exceed 20 years.

Subd. 4. Loan payments. Loan repayments of principal and interest received by the authority are appropriated to the authority to make new loans.

History: 1992 c 601 s 14