

Business Development

CHAPTER 116R

AIRCRAFT FACILITIES; STATE FINANCING

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116R.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 116R.01 to 116R.16.

Subd. 2. **Bonds.** "Bonds" means the bonds authorized under section 116R.02, subdivision 1, or bonds issued to refund these bonds, except for deficiency bonds.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of finance.

Subd. 4. **Corporate headquarters.** "Corporate headquarters" means the principal office from which the business of the corporation is conducted and the principal office of the chief executive officer of the corporation.

Subd. 5. **Deficiency bonds.** "Deficiency bonds" means the bonds authorized under section 116R.13, subdivision 3, or bonds issued to refund these bonds.

Subd. 6. **Project.** "Project" means the facilities or any property described in section 116R.02, subdivision 5 or 6, as applicable.

Subd. 7. **Related person.** "Related person" means any guarantor of the obligations of the lessee under the lease of a project and any other person whose relation to the lessee or the guarantor is that of a related person as defined in section 147 (a)(2) of the Internal Revenue Code of 1986, as amended through December 31, 1990, and whose financial condition the commissioner determines to be material for the purposes of carrying out the due diligence duties under section 116R.02.

Subd. 8. **State guaranteed bonds.** "State guaranteed bonds" means all outstanding bonds secured as provided in section 116R.02, subdivision 4, paragraph (a).

Subd. 9. **Cash collateral.** "Cash collateral" means cash or securities issued or unconditionally guaranteed as to payment of principal and interest by the United States of America and maturing or callable at the option of the holder within two years.

History: 1991 c 350 art 1 s 1; 1993 c 13 art 1 s 24

116R.02 BOND ISSUE; SALE AUTHORIZATION.

Subdivision 1. **Sale authorization.** The commissioner of finance, upon the request of the governor, may issue and sell revenue bonds as provided under sections 116R.01 to 116R.16 in one or more series or issues for the purposes provided in this section in the aggregate principal amount of up to \$350,000,000, except for refunding bonds. Proceeds of the bonds and investment income on the proceeds are appropriated in the amounts and for the purposes specified in subdivisions 2, 5, and 6 and section 116R.04.

Subd. 2. **Loan, lease, and revenue agreements.** (a) The commissioner may loan the proceeds of the bonds, make other loans or enter into lease agreements or other revenue agreements for the projects described in subdivisions 5 and 6. The commissioner may provide for servicing of the loans and agreements, the times they are payable and the amounts of payments, the amount of the loans and agreements, their security, and other terms, conditions, and provisions necessary or convenient in connection with them and may enter into all

necessary contracts and security instruments in connection with them. The commissioner shall seek to obtain the best available terms and security for the loans or agreements. The terms and security must be reasonably determined by the commissioner to be adequate and of the kind and degree which would be required by an investment banking or other financial institution. The facilities described in subdivisions 5 and 6 must be pledged as collateral for the loans made and bonds issued under sections 116R.01 to 116R.16.

(b) To reduce the risk that state general funds will be needed to pay debt service on the state guaranteed bonds, the commissioner must require that the financing arrangements include a coverage test satisfactory to the commissioner so that the sum of the value of the assets and other security pledged to the payment of bonds or the rent due under any lease of the project and taken into account by the commissioner is no less than 125 percent of the difference between the outstanding state guaranteed bonds, and any cash collateral held in a debt service reserve account and pledged to the payment of principal and interest for the state guaranteed bonds and no other bonds. Assets and other security that may be taken into account include (1) net unencumbered value of the project and any collateral or third party guaranty, including a letter of credit, pledged or otherwise furnished by a user of the project or by a benefited airline company as security for the payment of rent, (2) bond proceeds, including earnings thereon, and (3) prepayments of rent, after making such adjustments the commissioner determines to be appropriate to take into account any outstanding bonds secured by a lien on the project or rent that is prior to the lien securing the state guaranteed bonds, but excluding any cash collateral deducted from the outstanding state guaranteed bonds in applying the coverage test. The commissioner may adopt the method of valuing the assets and other security as the commissioner determines to be appropriate, including valuation of the project at its original cost less depreciation.

Subd 3. **Review procedure; data practices.** (a) Before issuing the bonds for a project, approving financial assistance, or entering into loan, lease, or other revenue agreements for the project described in subdivisions 5 and 6, the commissioner of finance shall review the financial condition of the proposed lessee or lessees of the project or projects, and any related person. The commissioner shall exercise due diligence in the review. The commissioner shall engage an independent, nationally recognized consultant having special expertise with the airline industry and its financing to prepare a written report on the financial condition of the lessee or lessees and any related person. A lessee and any related person shall provide all information required for the commissioner's review and the consultant's report, including information substantially equivalent to that required by an investment bank or other financial institution considering a project for debt financing.

(b) Except as otherwise provided in this subdivision, business plans, financial statements, customer lists, and market and feasibility studies required under sections 116R.01 to 116R.16 or submitted in connection with the provision of financial assistance or any agreement authorized under Laws 1991, chapter 350, are nonpublic data, as defined in section 13.02, subdivision 9. The commissioner or the commissioner of trade and economic development may make the data accessible to any person, agency, or public entity if the commissioner or the commissioner of trade and economic development determines that access is required under state or federal securities law or is necessary for the person, agency, or public entity to perform due diligence in connection with the provision of financial assistance to the projects described in subdivisions 5 and 6. The data may also be made available as requested by the legislative commission on planning and fiscal policy.

(c) Before the commissioner issues bonds for a project, approves financial assistance, or enters into loan, lease, or other revenue agreements for the project, the commissioner shall submit a report on the proposed transaction to the governor. The report must describe: all proposed state, metropolitan, and local government financial commitments; the financial assistance proposed to be provided; the proposed loan, lease, and revenue agreements; any other arrangements related to state and local debt, taxes, financing, and debt service; and the estimates of economic activity, air traffic, and other factors that have been used in assessing the prospective financial condition of the lessee or lessees and any related person. The report must contain the following findings:

(1) that the commissioners of trade and economic development and finance and, for purposes of a project described in subdivision 5, the metropolitan airports commission have

reviewed the current and prospective financial condition of each proposed lessee of the project or projects and any related person; and

(2) that, on the basis of their review, the commissioners and, for purposes of the project described in subdivision 5, the commission have determined that the revenues estimated to be available to the lessee or lessees for payments under the loan, lease, or other revenue agreements are at least sufficient during each year of the term of the proposed bonds to pay when due all financial obligations of the lessee or lessees under the terms of the proposed loan, lease, or other revenue agreements. Copies of the report must be filed at the legislature as provided in section 3.195 when the report is submitted to the governor.

Subd. 4. Security. (a) If so provided in the commissioner's order or any indenture authorizing the applicable series of bonds, up to \$125,000,000 principal amount of bonds for the facility described in subdivision 5, up to \$50,000,000 principal amount of bonds for the facility described in subdivision 6, and any bonds issued to refund these bonds may be secured by either of the following methods:

(1) upon the occurrence of any deficiency in a debt service reserve fund for a series of bonds as provided in section 116R.13, subdivision 3, the commissioner shall issue and sell deficiency bonds in a principal amount not to exceed (i) \$125,000,000 for facilities described in subdivision 5 and (ii) \$50,000,000 for the facilities described in subdivision 6; or

(2) the bonds may be directly secured by a pledge of the full faith, credit, and taxing power of the state and issued as general obligation revenue bonds of the state in accordance with the Minnesota Constitution, article XI, sections 4 to 7. In no event may the security provided by this paragraph extend in whole or part to any series of bonds other than the initial series of bonds so secured and any series of bonds issued to refund these bonds.

Deficiency bonds and bonds issued under clause (2) must be issued in accordance with and subject to sections 16A.641, 16A.66, 16A.672, and 16A.675; except for section 16A.641, subdivision 5, except as otherwise provided in Laws 1991, chapter 350, article 1, and except that the bonds may be sold at public or private sale at a price or prices determined by the commissioner as provided in section 116R.13, subdivision 3.

(b) The commissioner may request St. Louis county to pay or secure payment of principal and interest due on up to \$12,600,000 principal amount of revenue bonds for the facility described in subdivision 5 and principal and interest due on up to \$15,000,000 principal amount of revenue bonds for the facility described in subdivision 6. At the request of the commissioner, St. Louis county shall, by resolution of its county board, unconditionally and irrevocably pledge as a general obligation, its full faith, credit, and taxing power to pay or secure payment of principal and interest due on the principal amount or amounts requested by the commissioner. The general obligation and pledge of St. Louis county are not subject to and shall not be taken into account for purposes of any debt limitation. A levy of taxes for the St. Louis county general obligation is not subject to and shall not be taken into account for purposes of any levy limitations. The general obligation and the bonds secured by the general obligation may be issued without an election. Except for sections 475.61 and 475.64, chapter 475 does not apply to the general obligation or to the bonds secured by the general obligation.

(c) The commissioner may request the city of Duluth to pay or secure payment of principal and interest due on up to \$47,600,000 principal amount of revenue bonds for the facility described in subdivision 5. At the request of the commissioner, the city of Duluth shall pledge specified revenues of the city, as provided in Laws 1991, chapter 350, article 1, section 24, to pay principal and interest due on the principal amount requested by the commissioner.

(d) Bonds and deficiency bonds issued under sections 116R.01 to 116R.16 and any indenture entered into in connection with the issuance of the bonds are not subject to section 16B.06.

Subd. 5. Use of proceeds; aircraft maintenance facility. The proceeds of the bonds issued in a principal amount not to exceed \$250,000,000 may be used to finance the costs related to the planning, construction, improvement, or equipping of a heavy maintenance facility for aircraft and facilities subordinate and related to the facility to be located at the Duluth international airport and any costs of issuance, reserves, credit enhancement, or an initial period of interest payments related to the bonds or the facility. The bond proceeds are appropriated to the commissioner for the purposes specified in this subdivision. The facility may

be owned by the metropolitan airports commission and leased for the benefit of one or more airline companies for use as a heavy maintenance base. With the approval of the commissioner, the owner of the facility may place a mortgage or security interest lien on the facility or any interest in or part of the facility. The mortgage is exempt from the mortgage registry tax imposed under chapter 287. In the event of a default under the loan, lease agreement, or other revenue agreement, the facility, or any part of the facility, may be leased or sold to another person for any lawful purpose, subject to the approval of the commissioner. The approval of the commissioner is not required if the bond trustee has taken control of the facility as a result of a default.

The ownership of the facility by the owner may create no liability of the owner for payment of the debt service on the bonds if so determined by the commissioner. The owner may require as a condition of entering into the lease of the facility that the lessee or other party pay all costs, expenses, or any other obligations of ownership of the facility.

No revenues derived from the lease of the project may be used other than for a purpose related to the project, including its operation, administration, maintenance, improvement, or financing.

Subd. 6. Use of proceeds; aircraft engine repair facility. The proceeds of the bonds issued in a principal amount not to exceed \$100,000,000 may be used to finance the costs related to the planning, construction, improvement, or equipping of an aircraft engine repair facility and facilities subordinate and related to the facility to be located at the Chisholm-Hibbing municipal airport in the city of Hibbing and any costs of issuance, reserves, credit enhancement, or an initial period of interest payments related to the bonds or the facility. The bond proceeds are appropriated to the commissioner for the purposes specified in this subdivision. The facility may be owned by the owner of the Chisholm-Hibbing municipal airport, but may be leased, with or without a purchase option, to any person for the primary purpose of repairing aircraft engines or components. With the approval of the commissioner, the owner of the facility may place a mortgage or security interest lien on the facility. The mortgage is exempt from the mortgage registry tax imposed under chapter 287. In the event of a default under the loan, lease agreement, or other revenue agreement, the facility may be leased or sold to another person for any lawful purpose, subject to the approval of the commissioner. The approval of the commissioner is not required if the bond trustee has taken control of the facility as a result of a default.

Subd. 7. Agreement of lessee. (a) Before issuing the bonds for the facilities, approving financial assistance, or entering into loan, lease, or other revenue agreements for the projects described in subdivisions 5 and 6, the commissioner shall determine that the lessee and, if necessary, other corporations affiliated with by common ownership with the lessee have agreed to requirements satisfactory to the commissioner respecting aircraft noise abatement.

(b) The leases for each of the facilities described in subdivisions 5 and 6 must contain covenants and agreements by the airline corporation and any successor in interest providing for the retention and location of existing employees, operations, and facilities, including headquarters, of the airline corporation in the state until the principal and interest on the last series of deficiency bonds and general obligation revenue bonds issued under subdivision 4, paragraph (a), clause (2), are paid.

Subd. 8. Environmental assessment. Notwithstanding any other law or rule, no environmental review must be completed prior to the approval of an application and the issuance of a conditional commitment for the loan, or the taking of any other action permitted by Laws 1991, chapter 350, article 1, including the issuance of bonds, unless considered necessary or desirable by the commissioner to prepare for a final commitment and to make it effective. Environmental review, to the extent required by law, shall be made in conjunction with the issuance by state agencies of environmental permits for the project. Permits may be applied for prior to the issuance of a conditional commitment. Action shall be taken as expeditiously as possible on environmental review and all permits required.

Subd. 9. Project cost report. Before the commissioner of finance issues bonds, approves financial assistance, or enters into loan, lease, or other revenue agreements for the projects described in subdivisions 5 and 6, the commissioner of trade and economic development shall report to the governor on total public costs related to the construction of the proj-

ects The report must include: an estimate of the total state, metropolitan, and local tax costs for the project; and an estimate of the total state, metropolitan, and local capital costs, and method of financing, of any airport and off-airport improvements related to the construction of the facilities but not included in the cost of the facilities, including any runway or taxiway improvements and road, highway, sewer, or other public facility or utility improvement costs. Copies of the report must be filed at the legislature as provided in section 3.195 when the report is submitted to the governor.

History: 1991 c 350 art 1 s 2

116R.03 GENERAL POWERS.

For the purpose of exercising the specific powers authorized under sections 116R.01 to 116R.16 and effectuating the other purposes of sections 116R.01 to 116R.16, the commissioner may:

(1) acquire, hold, pledge, assign, or dispose of real or personal property or any interest in property, including a mortgage or security interest in a facility described in section 116R.02, subdivision 5 or 6;

(2) enter into agreements, contracts, or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association, or organization, including contracts or agreements for administration and implementation of all or part of sections 116R.01 to 116R.16;

(3) acquire real property, or an interest therein, by purchase or foreclosure, where the acquisition is necessary or appropriate;

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

(5) enter into agreements with other appropriate federal, state, or local governmental units; and

(6) contract with, use, or employ any federal, state, regional, or local public or private agency or organization, legal counsel, financial advisors, investment bankers or others, upon terms the commissioner considers necessary or desirable, to assist in the exercise of any of the powers authorized under sections 116R.01 to 116R.16 and to carry out the objectives of sections 116R.01 to 116R.16 and may pay for the services from bond proceeds or otherwise available department money.

History: 1991 c 350 art 1, s 3

116R.04 REVENUE BONDS; PURPOSES, TERMS, APPROVAL.

Subdivision 1. **Bonds.** The commissioner from time to time may issue negotiable bonds in one or more series or issues in a principal amount which, in the opinion of the commissioner of trade and economic development, is necessary to provide sufficient funds for achieving the purposes of sections 116R.01 to 116R.16, which may include the construction of a heavy maintenance facility for aircraft to be located at the Duluth international airport, the financing of an aircraft engine repair facility in the city of Hibbing, the payment of interest on bonds of the commissioner, the establishment of reserves to secure the bonds, and the payment of all other expenditures of the commissioner and the owner of a financed facility incident to and necessary or convenient to carry out the purposes and powers of sections 116R.01 to 116R.16. The bonds may be issued as bonds or notes or in any other form authorized by law. Except as provided in subdivision 3, section 116R.02, subdivision 4, paragraph (a), or an order of the commissioner or indenture authorizing the bonds, sections 16A.631 to 16A.675 do not apply to the bonds authorized under section 116R.02.

Subd. 2. **Refunding of bonds.** The commissioner from time to time may issue bonds for the purpose of refunding any bonds then outstanding, including the payment of any redemption premiums thereon, any interest accrued or to accrue to the redemption date, and costs related to the issuance and sale of the bonds. The proceeds of any refunding bonds may, in the discretion of the commissioner, be applied to the purchase or payment at maturity of the bonds to be refunded; to the redemption of such outstanding bonds on any redemption date,

or to pay interest on the refunding bonds and may, pending such application, be placed in escrow to be applied to such purchase, payment, retirement, or redemption. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations that are authorized investments under section 11A.24. The income earned or realized on any such investment may also be applied to the payment of the bonds to be refunded, interest or premiums on the refunded bonds, or to pay interest on the refunding bonds. After the terms of the escrow have been fully satisfied, any balance of such proceeds and any investment income may be returned to the general fund or, if applicable, the state bond fund, for use in any lawful manner. All refunding bonds issued under the provisions of this subdivision must be issued and secured in the manner provided by order of the commissioner, provided that any refunding bonds may be secured in any manner by which the refunded bonds were secured and payable from any source from which the refunded bonds were payable.

Subd. 3. **Kind of bonds.** All bonds issued under this section must be issued in the form and manner and information in a bond register is subject to the limitations provided in section 16A.672.

Subd. 4. **Compliance with federal law.** The commissioner may covenant and agree with the holders of the bonds that the state will comply, insofar as possible, with the provisions of the United States Internal Revenue Code now or hereafter enacted that are applicable to the bonds and that establish conditions under which the interest to be paid on the bonds will not be includable in gross income for federal tax purposes.

Subd. 5. **Taxability of interest.** The bonds may be issued without regard to whether the interest to be paid on them is includable in gross income for federal tax purposes.

History: 1991 c 350 art 1 s 4

116R.05 BONDS; ORDERS AUTHORIZING, ADDITIONAL TERMS, SALE.

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

Subd. 2. **Sources of payment.** Except as otherwise provided for bonds issued under section 116R.02, subdivision 4, paragraph (a), the bonds and interest payable thereon are payable solely from the following sources and are irrevocably appropriated for that purpose, but only to the extent provided in the order or indenture authorizing or securing the bonds:

- (1) revenues of any nature derived from the ownership, lease, operation, sale, foreclosure, or refinancing of a project described in section 116R.02, subdivision 5 or 6;
- (2) repayments of any loans made under sections 116R.01 to 116R.16;
- (3) proceeds of any bonds or deficiency bonds;
- (4) amounts in any account or accounts authorized by section 116R.11 or 116R.12;
- (5) amounts paid by St. Louis county under its obligations referred to in section 116R.02, subdivision 4, and amounts paid under Laws 1991, chapter 350, article 1, section 24 or 25, for the payment of bonds or interest thereon;
- (6) amounts payable under any insurance policy, guaranty, letter of credit, or other instrument securing the bonds;
- (7) any other revenues which the commissioner may pledge but excluding state appropriations unless the appropriation was specifically designated for that purpose; and

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

Subd. 3. **Not a state debt.** Except as provided in section 116R.02, subdivision 4, paragraph (a), no bond shall constitute a debt of the state within the meaning of any statutory or constitutional limitation or pledge the full faith and credit of the state and no holder of any bonds may compel any exercise of the taxing power of the state to pay principal, premiums, or interest for the bonds, nor to enforce payment of principal, premiums, or interest against any property of the state, except for property expressly pledged, mortgaged, encumbered, or appropriated for this purpose.

History: 1991 c 350 art 1 s 5

116R.06 BONDS; OPTIONAL ORDER AND CONTRACT PROVISIONS.

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

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

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

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

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

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

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

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

(h) It may define the acts or omissions to act which constitute a default in the obligations and duties of the commissioner and may provide for the rights and remedies of the holders of bonds in the event of a default, and provide any other matters of like or different character, consistent with the general laws of the state and other provisions of sections 116R.01 to 116R.16, which in any way affect the security or protection of the bonds and the rights of the bondholders.

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

History: 1991 c 350 art 1 s 6

116R.07 PLEDGES.

Any pledge made by the commissioner is valid and binding from the time the pledge is made. The money or property pledged and later received by the commissioner is immediately subject to the lien of the pledge without any physical delivery of the property or money or

further act, and the lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commissioner, whether or not those parties have notice of the lien or pledge. Neither the order nor any other instrument by which a pledge is created need be recorded.

History: 1991 c 350 art 1 s 7

116R.08 BONDS; NONLIABILITY OF INDIVIDUALS.

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

History: 1991 c 350 art 1 s 8

116R.09 BONDS; PURCHASE AND CANCELLATION.

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

History: 1991 c 350 art 1 s 9

116R.10 STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.

The state pledges and agrees with the holders of any bonds that the state will not limit or alter the rights vested in the commissioner to fulfill the terms of any agreements made with the bondholders, or in any way impair the rights and remedies of the holders until the bonds, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. The commissioner may include this pledge and agreement of the state in any agreement with the holders of bonds issued under sections 116R.01 to 116R.16.

History: 1991 c 350 art 1 s 10

116R.11 AIRCRAFT FACILITIES FUNDS AND DEBT SERVICE ACCOUNTS.

Subdivision 1. Funds. The commissioner or any trustee appointed by the commissioner under sections 116R.01 to 116R.16 shall establish and maintain an aircraft facilities fund for each of the projects described in section 116R.02, subdivisions 5 and 6. Except for amounts required by the commissioner to be deposited in a debt service account, proceeds of each issue of bonds authorized under section 116R.02, subdivision 1, must be deposited in a separate account, debt service reserve, or other account designated by the commissioner. Money in the account is appropriated to the commissioner. The commissioner or the owner of each project described in section 116R.02, subdivisions 5 and 6, may withdraw proceeds of bonds for application to the appropriated purposes in the manner provided by order of the commissioner or in any indenture authorized by order of the commissioner. The commissioner may establish whatever accounts might be necessary to carry out sections 116R.01 to 116R.16. All deposits into and disbursements from accounts for the purposes and from the sources of revenue authorized by sections 116R.01 to 116R.16 and provided in an order of the commissioner or an indenture or other agreement authorized by the commissioner are appropriated for that purpose.

Subd. 2. Accounts. The state treasurer or any trustee appointed by the commissioner under sections 116R.01 to 116R.16 shall maintain permanently on official books and records debt service accounts separate from all other funds and accounts, to record all receipts and disbursements of money for principal and interest payments on each series of bonds. No later than the due date of each principal and interest payment on the bonds, the commissioner shall withdraw from the proceeds of the bonds, or from revenues on hand and available for the purpose, and shall deposit in the debt service accounts the amount, if any, required to be de-

posited in the account by the order of the commissioner or any indenture authorized by an order of the commissioner. All amounts in any debt service account are appropriated for the payment of principal, premiums, and interest for the bonds to which the account relates. If the Minnesota Constitution, article XI, section 7, applies to any series of bonds, amounts in the debt service account and any debt service reserve account established under section 116R.13 for the bonds, regardless of who holds or invests the amounts, must be special accounts of the state bond fund, for which the state treasurer shall maintain records. Amounts in the accounts must reduce any levy otherwise required by the Minnesota Constitution for payment of principal or interest on the bonds.

History: 1991 c 350 art 1 s 11

116R.12 POWERS AND DUTIES OF TRUSTEE.

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

(1) enforce all rights of the bondholders, including the right to require the commissioner to collect fees, charges, interest, and payments on leases, loans, or interests therein held by the commissioner and eligible securities purchased by it adequate to carry out any agreement as to, or pledge of, those fees, charges, and payments, and to require the commissioner to carry out any other agreements with the holders of the bonds and to perform the duties required under sections 116R.01 to 116R.16;

(2) bring suit upon the bonds;

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

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

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

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

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

History: 1991 c 350 art 1 s 12

116R.13 DEBT SERVICE RESERVE ACCOUNT.

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

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

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

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

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

Subd. 2. **Use of money.** The money held in or credited to each debt service reserve account, except as provided in this section, must be used solely for the payment of the principal of bonds of the commissioner as the bonds mature or otherwise become due, the purchase of the bonds, the payment of interest on the bonds, the payment of any premium required when the bonds are redeemed before maturity, the payment of trustee or paying agency or registrar fees and expenses, the reimbursement of any advance made from another fund or account, or

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the payment of any rebate amounts owing to the United States government in accordance with any applicable covenant to comply with federal tax laws; provided, that money in a debt service reserve account may not be withdrawn at any time in an amount which would reduce the amount of the account to less than any amount which the commissioner determines to be reasonably necessary for the purposes of the account, except for the purpose of paying principal, premium, or interest due on bonds secured by the account; for the payment of which other money is not available.

Subd. 3. General obligation bonds. (a) If the amount in any debt service reserve account falls below the minimum required in an order of the commissioner or indenture for the applicable series of bonds and the order or indenture so provides and subject to the limitations in section 116R.02, subdivision 4, paragraph (a), clause (1), the commissioner shall issue as promptly as practicable, but in no event later than six months after the occurrence of the deficiency, general obligation bonds in accordance with the Minnesota Constitution, article XI, section 7, and sections 16A.641, subdivisions 1 to 4 and 6 to 13; 16A.66; 16A.672; 16A.675; and 116R.02, subdivision 4, except as otherwise provided in this section and unless provision is made for restoring the deficiency from other sources. Section 16A.641, subdivision 5, does not apply to the issuance of bonds authorized under this subdivision. Amounts sufficient to pay the costs of issuance of the deficiency bonds are appropriated to the commissioner from the general fund to the extent other available money is insufficient. Proceeds of the deficiency bonds may be used to pay costs related to the issuance of the deficiency bonds and interest due on the deficiency bonds and to establish a debt service reserve for the deficiency bonds. Any remaining proceeds must be deposited in the debt service reserve account, except that accrued interest must be deposited as provided in section 16A.641, subdivision 7, paragraph (b). The proceeds of the deficiency bonds and any investment income are appropriated for these purposes. In any event, the proceeds of the deficiency bonds deposited in the debt service reserve account must be an amount not less than the commissioner determines is required to pay principal and interest on the state guaranteed bonds secured by the debt service reserve account.

(b) The underwriting discount, spread, or commission paid or allowed to the underwriters or placement agents of deficiency bonds and bonds described in section 116R.02, subdivision 4, paragraph (a), must be an amount not in excess of the amount determined by the commissioner to be reasonable in light of the risk assumed and the expense of issuance, if any, required to be paid by the underwriters, placement agents, or prevailing market conditions and practices.

Subd. 4. Limitation. If the commissioner creates a debt service reserve account for the security of any series of bonds, the commissioner may not issue any additional bonds which are similarly secured if the amount of any of the debt service reserve accounts at the time of issuance does not equal or exceed the minimum amount, if any, required by the resolution creating that account, unless the commissioner deposits in each account at the time of issuance, from the proceeds of the bonds or otherwise, an amount which, together with the amount then in the account, will not be less than the minimum amount required.

Subd. 5. Excess money. To the extent consistent with the orders and indentures securing outstanding bonds, the commissioner may, at the close of any fiscal year, transfer to any other account from any debt service reserve account, any excess in that account over the amount considered by the commissioner to be reasonably necessary for the purpose of the account.

Subd. 6. Construction. Nothing in this section may be construed to limit the right of the commissioner to create and establish by order or indenture other accounts or security, in addition to debt service reserve accounts which are necessary or desirable in connection with any bonds.

History: 1991 c 350 art 1 s 13

116R.14 CONSTRUCTION.

Sections 116R.01 to 116R.16 are necessary for the welfare of the state of Minnesota and its inhabitants; therefore, they shall be liberally construed to effect their purpose.

History: 1991 c 350 art 1 s 14

116R.15 SEVERABILITY; ACTIONS.

Each of the provisions of sections 116R.01 to 116R.16, and each application thereof to particular circumstances, is severable. If any provision or application is found to be unconstitutional and void, it is the intention that the remaining provisions and applications shall be valid and enforceable to the full extent possible under section 645.20.

History: 1991 c 350 art 1 s 15

116R.16 CORPORATE HEADQUARTERS.

A lease agreement may be entered under sections 116R.01 to 116R.15 only if the affected parties provide an enforceable pledge that their corporate headquarters will remain in Minnesota for the duration of the agreement.

History: 1991 c 350 art 1 s 16