

## CHAPTER 446A

## PUBLIC FACILITIES AUTHORITY

446A.01	MINNESOTA PUBLIC FACILITIES AUTHORITY ACT.	446A.081	DRINKING WATER REVOLVING FUND.
446A.02	DEFINITIONS.	446A.083	METHAMPHETAMINE LABORATORY CLEANUP REVOLVING ACCOUNT.
446A.03	MINNESOTA PUBLIC FACILITIES AUTHORITY.	446A.085	TRANSPORTATION REVOLVING LOAN FUND.
446A.04	POWERS; DUTIES.	446A.09	REPORT; AUDIT.
446A.05	PROJECT LOANS.	446A.11	PROGRAM ADMINISTRATION.
446A.051	PROJECT FINANCIAL ASSISTANCE.		<b>BOND ISSUANCE</b>
446A.06	INDEPENDENT WASTEWATER TREATMENT GRANTS.	446A.12	ISSUANCE OF BONDS.
446A.07	WATER POLLUTION CONTROL REVOLVING FUND.	446A.13	TENDER OPTION.
446A.072	WASTEWATER INFRASTRUCTURE FUNDING PROGRAM.	446A.14	INTEREST RATE SWAPS AND OTHER AGREEMENTS.
446A.073	TOTAL MAXIMUM DAILY LOAD GRANTS.	446A.15	BOND FUND.
446A.074	CLEAN WATER LEGACY PHOSPHORUS REDUCTION GRANTS.	446A.16	MONEY OF THE AUTHORITY.
446A.075	SMALL COMMUNITY WASTEWATER TREATMENT PROGRAM.	446A.17	NONLIABILITY.
		446A.18	PURCHASE AND CANCELLATION BY AUTHORITY.
		446A.19	STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.
		446A.20	RESERVES; FUNDS; ACCOUNTS.

**446A.01 MINNESOTA PUBLIC FACILITIES AUTHORITY ACT.**

This chapter may be cited as the "Minnesota Public Facilities Authority Act."

**History:** 1987 c 386 art 3 s 18; 1999 c 86 art 1 s 69

**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 employment 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; 1Sp2003 c 4 s 1

**446A.03 MINNESOTA PUBLIC FACILITIES AUTHORITY.**

Subdivision 1. **Membership.** The Minnesota Public Facilities Authority consists of the commissioner of employment and economic development, the commissioner of finance, the commissioner of the Pollution Control Agency, the commissioner of agriculture, the commissioner of health, and the commissioner of transportation.

Subd. 2. **Chair; other officers.** The commissioner of employment 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 employment and eco-

conomic 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) A majority of the authority, excluding vacancies, constitutes a quorum to conduct its business, to exercise its powers, and for all other purposes.

(b) The board may conduct its business by any technological means available, including teleconference calls or interactive video, that allows for an interaction between members. If a meeting is conducted under this paragraph, a specific location must be available for the public to attend the meeting and at least one member must be present at that location.

**Subd. 5. Executive director.** The commissioner shall employ, with the concurrence of the authority, an executive director in the unclassified service. 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; 1995 c 232 s 8; 1997 c 141 s 8; 1Sp2003 c 4 s 1; 2006 c 281 art 4 s 23

#### 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, the Department of Health, the Pollution Control Agency, and the Department of Transportation, including costs for personnel and administrative services, for financings and the establishment and maintenance of reserve funds. Fees charged directly to borrowers or grantees upon executing a loan or grant agreement must not exceed one-half of one percent of the loan or grant 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. The authority shall enter into interagency agreements to transfer funds into appropriate administrative accounts established for fees collected under this subdivision for costs incurred by the commissioner, the Department of Health, or the Pollution Control Agency. Fees collected under this subdivision for costs incurred by the commissioner of transportation must be credited to the fund or account which is the source of the loan to which the fees are related.

(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 this chapter.

**History:** 1987 c 386 art 3 s 21; 1988 c 546 s 1,2; 1992 c 601 s 11; 1997 c 141 s 9; 1997 c 200 art 5 s 2; 1999 c 86 art 1 s 70; 2005 c 20 art 1 s 38

#### 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, 446A.07, 446A.072, 446A.073, 446A.074, 446A.075, and 446A.081 to apply for to finance projects and the manner in which the governmental unit will pay for its portion of the project cost. If a project is eligible for a grant under section 446A.073, 446A.074, or 446A.075, the total grant shall not exceed the greater of the maximum amount from a single program or the amount the project could receive under section 446A.072. 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; 2006 c 251 s 11

#### 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 capital-

ization 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.** (a) The Public Facilities 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 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.

(b) To be eligible for placement on the intended use plan:

(1) a project must be listed on the Pollution Control Agency's project priority list;

(2) the applicant must submit a written request to the Public Facilities Authority, including a brief description of the project, a project cost estimate and the requested loan amount, and a proposed project schedule; and

(3) for a construction loan, the project must have a facility plan approved by the Pollution Control Agency.

(c) The Pollution Control Agency shall annually provide to the Public Facilities Authority its project priority list of wastewater and storm water projects to be considered for funding. The Public Facilities Authority may not submit the plan until it has received the review and comment of the pollution control agency or until 30 days have elapsed since the plan was submitted to the Pollution Control Agency, whichever occurs first. In addition, the Public Facilities Authority shall offer municipalities seeking placement on the intended use plan an opportunity to review and comment on the plan before it is adopted. The plan may be amended to add additional projects for consideration for funding as it determines funds are available and additional projects are able to proceed.

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;

# MINNESOTA STATUTES 2006

(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, and 116J.617; provided that no more than \$4,000,000 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;

(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 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 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; 1995 c 220 s 122; 1996 c 407 s 47; 2002 c 380 art 2 s 17; 2002 c 393 s 64

**446A.071** Subdivision 1. [Repealed, 1996 c 463 s 61]

Subd. 2. [Repealed, 1996 c 463 s 61]

Subd. 3. [Repealed, 1996 c 463 s 61]

Subd. 4. [Repealed, 1996 c 463 s 61]

Subd. 5. [Repealed, 1996 c 463 s 61]

Subd. 6. [Repealed, 1996 c 463 s 61]

Subd. 7. [Repealed, 1995 c 220 s 141; 1996 c 463 s 61]

Subd. 8. [Repealed, 1996 c 463 s 61]

## **446A.072 WASTEWATER INFRASTRUCTURE FUNDING PROGRAM.**

**Subdivision 1. Establishment of program.** The authority will establish a wastewater infrastructure funding program to provide supplemental assistance to municipalities receiv-

ing funding through the water pollution control revolving loan program or the United States Department of Agriculture Rural Economic and Community Development's (USDA/RECD) Water and Waste Disposal Loans and Grants program for the design and planning, improvements to, and construction of municipal wastewater treatment systems. The purpose of the program is to assist municipalities demonstrating financial need in building cost-efficient projects to address existing environmental or public health problems. To implement the program, the authority shall establish a wastewater infrastructure fund to provide grants and loans for the purposes authorized under title VI of the Federal Water Pollution Control Act. The fund shall be credited with all investment income from the fund and all repayments of loans, grants, and penalties.

Subd. 2. [Repealed, 2002 c 393 s 91]

Subd. 3. **Program administration.** (a) The authority shall provide supplemental assistance, as provided in subdivision 5a to municipalities:

- (1) whose projects are listed on the agency's project priority list;
- (2) that demonstrate their projects are a cost-effective solution to an existing environmental or public health problem; and
- (3) whose projects are approved by the USDA/RECD or certified by the commissioner of the agency.

(b) For a municipality receiving grant funding from the USDA/RECD, applications must be made to the USDA/RECD with additional information submitted to the authority as required by the authority. Eligible project costs and affordability criteria shall be determined by the USDA/RECD.

(c) For a municipality not receiving grant funding from the USDA/RECD, application must be made to the authority on forms prescribed by the authority for the water pollution control revolving fund program with additional information as required by the authority. In accordance with section 116.182, the agency shall:

- (1) calculate the essential project component percentage which must be multiplied by the total project cost to determine the eligible project cost; and
- (2) review and certify approved projects to the authority.

(d) At the time funds are appropriated under this section, the authority shall reserve supplemental assistance for projects in order of their rankings on the agency's project priority list and in an amount based on their most recent cost estimates submitted to the authority or the as-bid costs, whichever is less.

Subd. 4. [Repealed, 2002 c 393 s 91]

Subd. 4a. [Repealed, 1998 c 404 s 84]

Subd. 5. [Repealed, 2002 c 393 s 91]

Subd. 5a. **Type and amount of assistance.** (a) For a municipality receiving grant funding from the USDA/RECD, the authority shall provide assistance in the form of a grant of up to one-half of the eligible grant amount determined by USDA/RECD. A municipality may not receive a grant under this paragraph for more than \$4,000,000 or \$15,000 per existing connection, whichever is less, unless specifically approved by law. In the case of a sanitary district or other multijurisdictional project for which the USDA/RECD is unable to fully fund up to one-half of the eligible grant amount, the authority may provide up to an additional \$1,000,000 for each additional municipality participating up to a maximum of \$8,000,000 or \$15,000 per existing connection, whichever is less, but not to exceed the maximum grant level determined by the USDA/RECD as needed to keep the project affordable.

(b) For a municipality not receiving grant funding from the USDA/RECD, the authority shall provide assistance in the form of a loan for the eligible project costs that exceed five percent of the market value of properties in the project service area. A municipality may not receive a loan under this paragraph for more than \$4,000,000 or \$15,000 per existing connection, whichever is less, unless specifically approved by law. In the case of a sanitary district or other multijurisdictional project, the authority may provide a loan under this paragraph for up to an additional \$1,000,000 for each additional municipality participating up to a maxi-

imum of \$8,000,000 or \$15,000 per existing connection, whichever is less, unless specifically approved by law. A loan under this paragraph must bear no interest, must be repaid as provided in subdivision 7, and must only be provided in conjunction with a loan from the water pollution control revolving fund under section 446A.07.

(c) Notwithstanding the limits in paragraphs (a) and (b), for a municipality receiving supplemental assistance under this section after January 1, 2002, if the authority determines that the municipality's construction and installation costs are significantly increased due to geological conditions of crystalline bedrock or karst areas and discharge limits that are more stringent than secondary treatment, the authority shall provide assistance in the form of half grant and half loan. Assistance from the authority may not be more than \$25,000 per existing connection. Any additional grant amount received for the same project must be used to reduce the amount of the municipality's loan from the water pollution control revolving fund that exceeds five percent of the market value of properties in the project service area.

Subd. 5b. **Special assessment deferral.** A municipality receiving a loan under subdivision 5a that levies special assessments to repay the loan under subdivision 5a or section 446A.07 may defer payment of such assessments under the provisions of sections 435.193 to 435.195.

Subd. 6. **Disbursements.** Disbursements of grants or loans awarded under this section by the authority to recipients must be made for eligible project costs as incurred by the recipients, and must be made by the authority in accordance with the project financing agreement and applicable state and federal laws and rules governing the payments.

Subd. 7. **Loan repayments.** Notwithstanding the limitations set forth in section 475.54, subdivision 1, this subdivision shall govern the maturities and mandatory sinking fund redemptions of the loans under this section. A municipality receiving a loan under this section shall repay the loan in semiannual payment amounts determined by the authority. The payment amount must be based on the average payments on the municipality's water pollution control revolving fund loan or, if greater, the minimum amount required to fully repay the loan by the maturity date. Payments must begin within one year of the date of the municipality's final payment on the water pollution control revolving fund loan. The final maturity date of the loan under this section must be no later than 20 years from the date of the first payment on the loan under this section and no later than 40 years from the date of the first payment on the water pollution control revolving fund loan.

Subd. 8. **Eligibility.** A municipality is eligible for assistance under this section only after grant funding from other sources has been applied for, obtained, rejected, or the authority has determined that the potential funding is unlikely.

Subd. 9. **Loan limitation.** Supplemental assistance may not be used to reduce the sewer service charges of a significant wastewater contributor, or a single user that has caused the need for the project or whose current or projected flow and load exceed one-half of the current wastewater treatment plant's capacity.

Subd. 10. [Repealed, 2002 c 393 s 91]

Subd. 11. **Report on needs.** By February 1 of each even-numbered year, the authority, in conjunction with the Pollution Control Agency, shall prepare a report to the Finance Division of the senate Environment and Natural Resources Committee and the house Environment and Natural Resources Finance Committee on wastewater funding assistance needs of municipalities under this section.

Subd. 12. **System replacement fund.** Each municipality receiving a loan under this section shall establish a system replacement fund and shall annually deposit a minimum of \$.50 per 1,000 gallons of flow for major rehabilitation, expansion, or replacement of the treatment system at the end of its useful life. Money must remain in the account, for the life of the loan unless use of the fund is approved in writing by the authority for major rehabilitation, expansion, or replacement of the treatment system. By March 1 each year during the life of the loan, each municipality shall submit a report to the authority regarding the amount deposited and the fund balance for the prior calendar year. Failure to comply with the requirements of this subdivision shall result in the authority assessing a penalty fee to the municipality

equal to one percent of the outstanding loan balance for each year of noncompliance. Failure to make the required deposit or pay the penalty fee as required constitutes a default on the loan.

Subd. 13. [Repealed, 2002 c 393 s 91]

Subd. 14. **Consistency with land use plans.** A municipality applying for a project in an unsewered area shall include in its application to the authority a certification from the county in which the project is located that:

(1) the project is consistent with the county comprehensive land use plan, if the county has adopted one;

(2) the project is consistent with the county water plan, if the county has adopted one; and

(3) the county has adopted specific land use ordinances or controls so as to meet or exceed the requirements of Minnesota Rules, part 7080.0305.

**History:** 1996 c 463 s 45; 1997 c 246 s 18; 1998 c 404 s 50–52; 1999 c 223 art 2 s 48; 2000 c 492 art 1 s 60; 2002 c 393 s 65–75; 2006 c 281 art 4 s 24

#### 446A.073 TOTAL MAXIMUM DAILY LOAD GRANTS.

Subdivision 1. **Program established.** When money is appropriated for grants under this program, the authority must make grants to municipalities to cover up to one-half the cost of wastewater treatment or stormwater projects made necessary by wasteload reductions under total maximum daily load plans required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d).

Subd. 2. **Grant application.** Application for a grant must be made to the authority on forms prescribed by the authority for the total maximum daily load grant program, with additional information as required by the authority, including a project schedule and cost estimate for the work necessary to comply with the point source wasteload allocation. The Pollution Control Agency shall:

(1) in accordance with section 116.182, calculate the essential project component percentage, which must be multiplied by the total project cost to determine the eligible project cost; and

(2) review and certify to the authority those projects that have plans and specifications approved under section 115.03, subdivision 1, paragraph (f).

Subd. 3. **Project priorities.** When money is appropriated for grants under this program, the authority shall reserve money for projects in the order that their total maximum daily load plan was approved by the United States Environmental Protection Agency and in an amount based on their most recent cost estimates submitted to the authority or the as-bid costs, whichever is less.

Subd. 4. **Grant approval.** The authority must make a grant to a municipality, as defined in section 116.182, subdivision 1, only after:

(1) the commissioner of the Minnesota Pollution Control Agency has certified to the United States Environmental Protection Agency a total maximum daily load plan for identified waters of this state that includes a point source wasteload allocation;

(2) the Environmental Protection Agency has approved the plan;

(3) a municipality affected by the plan has estimated the cost to it of wastewater treatment projects necessary to comply with the point source wasteload allocation;

(4) the Pollution Control Agency has approved the cost estimate; and

(5) the authority has determined that the additional financing necessary to complete the project has been committed from other sources.

Subd. 5. **Grant disbursement.** Disbursement of a grant must be made for eligible project costs as incurred by the municipality and in accordance with a project financing agreement and applicable state and federal laws and rules governing the payments.

**History:** 2005 c 20 art 1 s 39; 2006 c 251 s 12,13



**446A.074 CLEAN WATER LEGACY PHOSPHORUS REDUCTION GRANTS.**

Subdivision 1. **Creation of account.** A clean water legacy capital improvement account is created in the bond proceeds fund. Money in the account may only be used for grants for eligible capital costs as provided in this section. Money in the clean water legacy capital improvement fund, including interest earned, is appropriated to the authority for the purposes of this section.

Subd. 2. **Grants.** The authority shall award grants from the clean water legacy capital improvement account to governmental units for the capital costs of wastewater treatment facility projects or a portion thereof that will reduce the discharge of total phosphorus from the facility to one milligram per liter or less. A project is eligible for a grant if it meets the following requirements:

(1) the applicable phosphorus discharge limit is incorporated in a permit issued by the agency for the wastewater treatment facility on or after March 28, 2000, the grantee agrees to comply with the applicable limit as a condition of receiving the grant, or the grantee made improvements to a wastewater treatment facility on or after March 28, 2000, that include infrastructure to reduce the discharge of total phosphorus to one milligram per liter or less;

(2) the governmental unit has submitted a facilities plan for the project to the agency and a grant application to the authority on a form prescribed by the authority; and

(3) the agency has approved the facilities plan, and certified the eligible costs for the project to the authority.

Subd. 3. **Eligible capital costs.** Eligible capital costs for phosphorus reduction grants under subdivision 4, paragraph (a), include engineering and inspection costs and the as-bid construction costs for phosphorus treatment. Eligible capital costs for phosphorus reduction grants under subdivision 4, paragraph (b), include the final, incurred construction, engineering, and inspection costs for phosphorus treatment.

Subd. 4. **Grant amounts and priorities.** (a) Priority must be given to projects that start construction on or after July 1, 2006. If a facility's plan for a project is approved by the agency before July 1, 2010, the amount of the grant is 75 percent of the eligible capital cost of the project. If a facility's plan for a project is approved by the agency on or after July 1, 2010, the amount of the grant is 50 percent of the eligible capital cost of the project. Priority in awarding grants under this paragraph must be based on the date of approval of the facility's plan for the project.

(b) Projects that meet the eligibility requirements in subdivision 2 and have started construction before July 1, 2006, may be eligible for grants to reimburse up to 75 percent of the eligible capital cost of the project, less any amounts previously received in grants from other sources, provided that reimbursement is an eligible use of funds. Application for a grant under this paragraph must be submitted to the authority no later than June 30, 2008. Priority for award of grants under this paragraph must be based on the date of agency approval of the facility plan.

(c) In each fiscal year that money is available for grants, the authority shall first award grants under paragraph (a) to projects that met the eligibility requirements of subdivision 2 by May 1 of that year. The authority shall use any remaining money available that year to award grants under paragraph (b). Grants that have been approved but not awarded in a previous fiscal year carry over and must be awarded in subsequent fiscal years in accordance with the priorities in this paragraph.

(d) Disbursements of grants under this section by the authority to recipients must be made for eligible project costs as incurred by the recipients, and must be made by the authority in accordance with the project financing agreement and applicable state law.

Subd. 5. **Fees.** The authority may charge the grant recipient a fee for its administrative costs not to exceed one-half of one percent of the grant amount, to be paid upon execution of the grant agreement.

**History:** 2006 c 251 s 14

**446A.075 SMALL COMMUNITY WASTEWATER TREATMENT PROGRAM.**

Subdivision 1. **Creation of account.** A small community wastewater treatment account is created in the special revenue fund. The authority shall make loans and grants from the account as provided in this section. Money in the fund is annually appropriated to the authority and does not lapse. The account shall be credited with all loan repayments and investment income from the account and servicing fees assessed under section 446A.04, subdivision 5. The authority shall manage and administer the small community wastewater treatment account and for these purposes, may exercise all powers provided in this chapter.

Subd. 2. **Loans and grants.** (a) The authority shall award loans as provided in paragraph (b) and grants as provided in paragraphs (c) and (d) to governmental units from the small community wastewater treatment account for projects to replace noncomplying individual sewage treatment systems with a community wastewater treatment system or systems meeting the requirements of section 115.55. A governmental unit receiving a loan or loan and grant from the account shall own the individual wastewater treatment systems or community wastewater treatment systems built under the program and shall be responsible, either directly or through a contract with a private vendor, for all inspections, maintenance, and repairs necessary to ensure proper operation of the systems.

(b) Loans may be awarded for up to 100 percent of eligible project costs as described in this section.

(c) When the area to be served by a project has a median household income below the state average median household income, the governmental unit may receive 50 percent of the funding provided under this section in the form of a grant. An applicant may submit income survey data collected by an independent party if it believes the most recent United States census does not accurately reflect the median household income of the area to be served.

(d) If requested, and if it is an eligible use of funds, a governmental unit receiving funding under this section may receive a grant equal to ten percent of its first year's award, up to a maximum of \$30,000, to contract for technical assistance services from the University of Minnesota Extension Service to develop the technical, managerial, and financial capacity necessary to build, operate, and maintain the systems.

Subd. 3. **Project priority list.** Governmental units seeking loans or loans and grants from the small community wastewater treatment program shall first submit a project proposal to the agency on a form prescribed by the agency. A project proposal shall include the compliance status for all individual sewage treatment systems in the project area. The agency shall rank project proposals on its project priority list used for the water pollution control revolving fund under section 446A.07.

Subd. 4. **Applications.** Governmental units with projects on the project priority list shall submit applications to the authority on forms prescribed by the authority. The application shall include:

(1) a list of the individual sewage treatment systems proposed to be replaced over a period of up to three years;

(2) a project schedule and cost estimate for each year of the project;

(3) a financing plan for repayment of the loan; and

(4) a management plan providing for the inspection, maintenance, and repairs necessary to ensure proper operation of the systems.

Subd. 5. **Awards.** The authority shall award loans or loans and grants as provided in subdivision 2 to governmental units with approved applications based on their ranking on the agency's project priority list. The total amount awarded shall be based on the estimated project costs for the portion of the project expected to be completed within one year, up to an annual maximum of \$500,000. For projects expected to take more than one year to complete, the authority may make a multiyear commitment for a period not to exceed three years, contingent on the future availability of funds. Each year of a multiyear commitment must be funded by a separate loan or loan and grant agreement meeting the terms and conditions in

subdivision 6. A governmental unit receiving a loan or loan and grant under a multiyear commitment shall have priority for additional loan and grant funds in subsequent years.

Subd. 6. **Loan terms and conditions.** Loans from the small community wastewater treatment account shall comply with the following terms and conditions:

(1) principal and interest payments must begin no later than two years after the loan is awarded;

(2) loans shall carry an interest rate of one percent;

(3) loans shall be fully amortized within ten years of the first scheduled payment or, if the loan amount exceeds \$10,000 per household, shall be fully amortized within 20 years but not to exceed the expected design life of the system;

(4) a governmental unit receiving a loan must establish a dedicated source or sources of revenues for repayment of the loan and must issue a general obligation note to the authority for the full amount of the loan; and

(5) each property owner voluntarily seeking assistance for repair or replacement of an individual treatment system under this program must provide an easement to the governmental unit to allow access to the system for management and repairs.

Subd. 7. **Special assessment deferral.** (a) A governmental unit receiving a loan under this section that levies special assessments to repay the loan may defer payment of the assessments under the provisions of sections 435.193 to 435.195.

(b) A governmental unit that defers payment of special assessments for one or more properties under paragraph (a) may request deferral of that portion of the debt service on its loan, and the authority shall accept appropriate amendments to the general obligation note of the governmental unit. If special assessment payments are later received from properties that received a deferral, the funds received shall be paid to the authority with the next scheduled loan payment.

Subd. 8. **Eligible costs.** Eligible costs for small community wastewater treatment loans and grants shall include the costs of technical assistance as provided in subdivision 2, paragraph (d), design, construction, related legal fees, and land acquisition.

Subd. 9. **Disbursements.** Loan and grant disbursements by the authority under this section must be made for eligible project costs as incurred by the recipients, and must be made in accordance with the project loan or grant and loan agreement and applicable state law.

Subd. 10. **Audits.** A governmental unit receiving a loan under this section must annually provide to the authority for the term of the loan a copy of its annual independent audit or, if the governmental unit is not required to prepare an independent audit, a copy of the annual financial reporting form it provides to the state auditor.

**History:** 2006 c 251 s 15

**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 Safe Drinking Water Act Amendments of 1996, Public Law 104-182.

(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 shall enter into an operating agreement with the administrator of the United States Environmental Protection Agency to satisfy the criteria in the act to operate the fund. The authority and the department may exercise the powers necessary to comply with the requirements specified in the agreements and to ensure that loan recipients comply with all applicable federal and state requirements.

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;

# MINNESOTA STATUTES 2006

(5) to earn interest on fund accounts;

(6) to pay the reasonable costs incurred by the authority, the Department of Employment and Economic Development, and the department for conducting activities as authorized and required under the act up to the limits authorized under the act; and

(7) to develop and administer programs for water system supervision, source water protection, and related programs required 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 employment 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 Employment and Economic Development may adopt a single set of rules for the program.

**History:** 1994 c 632 art 2 s 50; 1997 c 200 art 5 s 3-5; 1Sp2003 c 4 s 1

## 446A.083 METHAMPHETAMINE LABORATORY CLEANUP REVOLVING ACCOUNT.

**Subdivision 1. Definitions.** As used in this section:

(1) "clandestine lab site" has the meaning given in section 152.0275, subdivision 1, paragraph (a);

(2) "property" has the meaning given in section 152.0275, subdivision 2, paragraph (a), but does not include motor vehicles; and

(3) "remediate" has the meaning given to remediation in section 152.0275, subdivision 1, paragraph (a).

**Subd. 2. Account established.** The authority shall establish a methamphetamine laboratory cleanup revolving account in the public facility authority fund to provide loans to counties and cities to remediate clandestine lab sites. The account must be credited with repayments.

**Subd. 3. Applications.** Applications by a county or city for a loan from the account must be made to the authority on the forms prescribed by the authority. The application must include, but is not limited to:

(1) the amount of the loan requested and the proposed use of the loan proceeds;

(2) the source of revenues to repay the loan; and

(3) certification by the county or city that it meets the loan eligibility requirements of subdivision 4.

Subd. 4. **Loan eligibility.** A county or city is eligible for a loan under this section if the county or city:

- (1) identifies a site or sites designated by a local public health department or law enforcement as a clandestine lab site;
- (2) has required the site's property owner to remediate the site at cost, under a local public health nuisance ordinance that addresses clandestine lab remediation;
- (3) certifies that the property owner cannot pay for the remediation immediately;
- (4) certifies that the property owner has not properly remediated the site; and
- (5) issues a revenue bond, secured as provided in subdivision 8, payable to the authority to secure the loan.

Subd. 5. **Use of loan proceeds; reimbursement by property owner.** (a) A loan recipient shall use the loan to remediate the clandestine lab site or if this has already been done to reimburse the applicable county or city fund for costs paid by the recipient to remediate the clandestine lab site.

(b) A loan recipient shall seek reimbursement from the owner of the property containing the clandestine lab site for the costs of the remediation. In addition to other lawful means of seeking reimbursement, the loan recipient may recover its costs through a property tax assessment by following the procedures specified in section 145A.08, subdivision 2, paragraph (c).

(c) A mortgagee is not responsible for cleanup costs under this section solely because the mortgagee becomes an owner of real property through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

Subd. 6. **Award and disbursement of funds.** The authority shall award loans to recipients on a first-come, first-served basis, provided that the recipient is able to comply with the terms and conditions of the authority loan, which must be in conformance with this section. The authority shall make a single disbursement of the loan upon receipt of a payment request that includes a list of remediation expenses and evidence that a second-party sampling was undertaken to ensure that the remediation work was successful or a guarantee that such a sampling will be undertaken.

Subd. 7. **Loan conditions and terms.** (a) When making loans from the revolving account, the authority shall comply with the criteria in paragraphs (b) to (e).

(b) Loans must be made at a two percent per annum interest rate for terms not to exceed ten years unless the recipient requests a 20-year term due to financial hardship.

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

(d) A loan recipient must identify and establish a source of revenue for repayment of the loan and must undertake whatever steps are necessary to collect payments within one year of receipt of funds from the authority.

(e) The account 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).

(f) Loans must be made only to recipients with clandestine lab ordinances that address remediation.

Subd. 8. **Authority to incur debt.** Counties and cities may incur debt under this section by resolution of the board or council authorizing issuance of a revenue bond to the authority. The county or city may secure and pay the revenue bond only with proceeds derived from the property containing the clandestine lab site, including assessments and charges under section 145A.08, subdivision 2, paragraph (c); payments by the property owner; or similar revenues.

**History:** 2005 c 136 art 7 s 15

**446A.085 TRANSPORTATION REVOLVING LOAN FUND.**

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

(b) "Act" means the National Highway System Designation Act of 1995, Public Law 104-59, as amended.

(c) "Borrower" means the state, counties, cities, and other governmental entities eligible under the act and state law to apply for and receive loans from the transportation revolving loan fund.

(d) "Loan" means financial assistance provided for all or part of the cost of a project including money disbursed in anticipation of reimbursement or repayment, loan guarantees, lines of credit, credit enhancements, equipment financing leases, bond insurance, or other forms of financial assistance.

(e) "Transportation Committee" means a committee of the Minnesota Public Facilities Authority, acting on behalf of the Minnesota Public Facilities Authority, consisting of the commissioner of the Department of Employment and Economic Development, the commissioner of finance, and the commissioner of transportation.

Subd. 2. **Purpose.** The purpose of the transportation revolving loan fund is to provide loans for public transportation projects eligible for financing or aid under any federal act or program or state law, including, without limitation, the study of the feasibility of construction, reconstruction, resurfacing, restoring, rehabilitation, or replacement of transportation facilities; acquisition of right-of-way; and maintenance, repair, improvement, or construction of city, town, county, or state highways, roads, streets, rights-of-way, bridges, tunnels, railroad-highway crossings, drainage structures, signs, maintenance and operation facilities, guardrails, and protective structures used in connection with highways or transit projects. Enhancement items, including without limitation bicycle paths, ornamental lighting, and landscaping, are eligible for financing provided they are an integral part of overall project design and construction of a federal-aid highway. Money in the fund may not be used for any toll facilities project or congestion-pricing project.

Subd. 3. **Establishment of fund.** A transportation revolving loan fund is established to make loans for the purposes described in subdivision 2. A highway account is established in the fund for highway projects eligible under United States Code, title 23. A transit account is established in the fund for transit capital projects eligible under United States Code, title 49. A state funds general loan account is established in the fund for transportation projects eligible under state law. Other accounts may be established in the fund as necessary for its management and administration. The transportation revolving loan fund receives federal money under the act and money from any source. Money received under this section must be paid to the commissioner of finance and credited to the transportation revolving loan fund. Money in the fund is annually appropriated to the authority and does not lapse. The fund must be credited with investment income, and with repayments of principal and interest, except for servicing fees assessed under sections 446A.04, subdivision 5, and 446A.11, subdivision 8.

Subd. 4. **Management of fund and accounts.** The authority shall manage and administer the transportation revolving loan fund and individual accounts in the fund. For those purposes, the authority may exercise all powers provided in this chapter.

Subd. 5. [Repealed by amendment, 1Sp2001 c 8 art 2 s 67]

Subd. 6. **Transportation Committee.** The Transportation Committee may authorize the making of loans to borrowers by the authority for transportation purposes authorized by the act or this section, without further action by the authority. The authority may not make loans for transportation purposes without the approval of the Transportation Committee. Each project must be certified by the commissioner of transportation before its consideration by the Transportation Committee.

Subd. 7. **Applications.** Applicants for loans must submit an application to the Transportation Committee on forms prescribed by the Transportation Committee. The applicant must provide the following information:

- (1) the estimated cost of the project and the amount of the loan sought;
- (2) other possible sources of funding in addition to loans sought from the transportation revolving loan fund;
- (3) the proposed methods and sources of funds to be used for repayment of loans received; and
- (4) information showing the financial status and ability of the borrower to repay loans.

Subd. 8. **Certification of projects.** The commissioner of transportation shall consider the following information when evaluating projects to certify for funding to the Transportation Committee:

- (1) a description of the nature and purpose of the proposed transportation project including an explanation of the need for the project and the reasons why it is in the public interest;
- (2) the relationship of the project to the area transportation improvement program, the approved statewide transportation improvement program, and to any transportation plans required under state or federal law;
- (3) the estimated cost of the project and the amount of loans sought;
- (4) proposed sources of funding in addition to loans sought from the transportation revolving loan fund;
- (5) the need for the project as part of the overall transportation system;
- (6) the overall economic impact of the project; and
- (7) the extent to which completion of the project will improve the movement of people and freight.

Subd. 9. **Loan conditions.** When making loans from the transportation revolving loan fund, the Transportation Committee shall comply with the applicable provisions of the act and state law. In addition, a loan made under this section must:

- (1) bear interest at or below market rates or as otherwise specified in federal law;
- (2) have a repayment term not longer than 30 years;
- (3) be fully amortized no later than 30 years after project completion;
- (4) be subject to repayment of principal and interest beginning not later than five years after the facility financed with a loan has been completed, or in the case of a highway project, five years after the facility has opened to traffic; and
- (5) be disbursed for specific project elements only after all applicable environmental requirements have been met.

Subd. 10. **Loans in anticipation of future apportionments.** A loan may be made to a county, or to a statutory or home rule charter city having a population of 5,000 or more, in anticipation of repayment of the loan from sums that will be apportioned to a county from the county state-aid highway fund under section 162.07 or to a city from the municipal state-aid street fund under section 162.14.

Subd. 11. **Payment by county or city.** Notwithstanding the allocation provisions of section 162.08 for counties, and the apportionment provisions of section 162.14 for cities, sums apportioned under section 162.13 to a statutory or home rule charter city, or under section 162.07 to a county, that has loan repayments due to the transportation revolving loan fund, shall be paid by the commissioner of transportation to the appropriate loan fund to offset the loan repayments that are due.

Subd. 12. **Rules of Transportation Committee and authority.** The commissioner of the Department of Employment and Economic Development shall adopt administrative rules specifying the procedures that will be used for the administration of the duties of the Transportation Committee and authority. The rules must include criteria, standards, and procedures that will be used for making loans, determining interest rates to be charged on loans, the amount of project financing to be provided, the collateral that will be required, the re-



quirements for dedicated sources of revenue or income streams to ensure repayment of loans, and the length of repayment terms.

Subd. 13. **Authority and rules of department.** The commissioner of transportation shall establish, adopt rules for, and implement a program to identify, assist with the development of, and certify projects eligible for loans under the act to the Transportation Committee. Until rules are adopted by the commissioner of transportation, the commissioner of transportation may certify to the Transportation Committee any project that has been reviewed through an approved planning process that qualifies the project to be included in the statewide transportation program or amended into the statewide transportation improvement program.

Subd. 14. **Joint rules.** The commissioner of the Department of Employment and Economic Development and the commissioner of transportation may adopt a single set of rules.

**History:** 1997 c 141 s 10; 1998 c 389 art 16 s 17; 1999 c 230 s 34,35; 1Sp2001 c 8 art 2 s 67; 2003 c 112 art 2 s 50; 1Sp2003 c 4 s 1

#### 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 [Repealed, 1996 c 310 s 1]

#### 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 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 obliga-

tions 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 118A.

(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; 1995 c 233 art 2 s 56; 2001 c 7 s 90

## 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 \$1,500,000,000, excluding bonds for which refunding bonds or crossover refunding bonds have been issued.

**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 sections 16C.03, subdivision 4, and 16C.05.

**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; 1Sp1995 c 2 art 1 s 39; 1997 c 200 art 5 s 6; 1998 c 386 art 2 s 91; 2002 c 380 art 2 s 18; 2002 c 393 s 76; 2004 c 272 art 4 s.1; 2006 c 258 s 39; 2006 c 281 art 4 s 25

#### 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 RATE SWAPS AND OTHER AGREEMENTS.

Subdivision 1. **Agreements.** (a) The authority may enter into interest rate exchange or swap agreements, hedges, forward purchase or sale agreements, loan sale or pooling agreements or trusts, or other similar agreements in connection with:

- (1) the issuance or proposed issuance of bonds;
- (2) the making, proposed making, or sale of loans or other financial assistance or investments;
- (3) outstanding bonds, loans, or other financial assistance; or
- (4) existing similar agreements.

(b) The agreements authorized by this subdivision include, without limitation, master agreements, options or contracts to enter into those agreements in the future and related agreements, including, without limitation, agreements to provide credit enhancement, liquidity, or remarketing; valuation; monitoring; or administrative services currently or in the future. However, the term of an option to enter into an interest rate swap, exchange, hedge, or other similar agreement and the term of a contract to sell, buy, or refund bonds in the future must not exceed five years and the authorization of the authority to enter into option agreements with respect to interest rate swap agreements expires on December 31, 2008; provided that the option agreements entered into prior to that date remain valid agreements of the authority after that date.

(c) The agreements authorized by this subdivision or supplements to master agreements may be entered into on the basis of negotiation with a qualified third party or through a competitive proposal process on terms and conditions and with covenants and provisions approved by the authority and may include, without limitation:

- (1) provisions establishing reserves;
- (2) pledging assets or revenues of the authority for current or other payments or termination payments;
- (3) contracting with the other parties to the agreements to provide for the custody, collection, securing, investment, and payment of money of the authority or money held in trust; or

(4) requiring the issuance of bonds or entering into loans or other agreements authorized by this subdivision in the future.

(d) Subject to the terms of the agreement and other agreements of the authority with bondholders or other third parties, the agreements authorized by this subdivision may be general or limited obligations of the authority payable from all available or certain specified funds appropriated to the authority. The agreements authorized by this subdivision do not constitute debt of the authority for the purposes of the limits on bonds or notes of the authority set forth in section 446A.12, subdivision 1.

(e) The authority may issue bonds to provide funds to make payments, including, without limitation, termination payments pursuant to an agreement authorized by this subdivision.

(f) The aggregate notional amount of interest rate swap or exchange agreements in effect at any time must not exceed an amount equal to ten percent of the aggregate principal amount of bonds the authority is authorized to have outstanding pursuant to section 446A.12, subdivision 1, including the notional amount of interest rate swap or exchange agreements with respect to which a reversing agreement has been entered into, the effect of which is to terminate the original agreement or a portion thereof, and reversing agreements with respect to all or a portion of existing agreements.

**Subd. 2. Powers of authority.** For the purposes of this section, the authority may exercise all powers provided in this chapter. The authority may consent, whenever it considers it necessary or desirable in connection with agreements entered into under this subdivision, to modifications, amendments, or waivers of the terms of the agreements. The proceeds of any agreements entered into pursuant to this subdivision are appropriated to the authority pursuant to section 446A.11, subdivision 13. The agreements entered into pursuant to this subdivision are not subject to sections 16C.03, subdivision 4, and 16C.05.

**History:** 1988 c 546 s 7; 2004 c 272 art 4 s 2

#### 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 commissioner of finance.** Except as otherwise provided in this section, money of the authority must be paid to the commissioner of finance as agent of the authority and the commissioner 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 commissioner 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 commissioner of finance, 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 commissioner 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; 2003 c 112 art 2 s 50

#### 446A.17 NONLIABILITY.

Subdivision 1. **Nonliability of individuals.** No member of the authority or other person executing the bonds, loans, interest rate swaps, or other agreements or contracts of the au-

thority is liable personally on the bonds, loans, interest rate swaps, or other agreements or contracts of the authority or is subject to any personal liability or accountability by reason of their issuance, execution, delivery, or performance.

Subd. 2. **Nonliability of state.** The state is not liable on bonds, loans, interest rate swaps, or other agreements or contracts of the authority issued or entered into under this chapter and the bonds, loans, interest rate swaps, or other agreements or contracts of the authority are not a debt of the state. The bonds, loans, interest rate swaps, or other agreements or contracts of the authority must contain on their face a statement to that effect.

**History:** 1988 c 546 s 10; 2004 c 272 art 4 s 3

#### **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 or other parties to any loans, interest rate swaps, or other agreements or contracts of the authority 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 parties to any loans, interest rate swaps, or other agreements or contracts of the authority 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 or; with respect to any loans, interest rate swaps, or other agreements or contracts of the authority, the agreements have been fully performed by the authority or otherwise terminated or 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 or in any loans, interest rate swaps, or other agreements or contracts of the authority.

**History:** 1988 c 546 s 12; 2004 c 272 art 4 s 4

#### **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** [Repealed, 1999 c 231 s 207]