

CHAPTER 547—H.F.No. 2045

An act relating to economic development; creating a small business finance agency with authority to issue and sell tax exempt obligations to provide loans for small business and pollution control projects; requiring reports.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [362.50] **SMALL BUSINESS FINANCE AGENCY, DEFINITIONS.** Subdivision 1. Each term defined in this section has the meaning given it whenever used in sections 1 to 5.

Subd. 2. "Agency" means the small business finance agency created in section 2.

Subd. 3. "Owner" means a person, partnership, firm, or corporation engaged in a small business and applying to the agency for a loan under section 3.

Subd. 4. "Small business" means an enterprise defined as a small business concern in regulations of the United States small business administration pursuant to 15 U. S. Code, Sections 631 to 647, as in effect March 1, 1980, which is engaged in any industrial or commercial activity except:

- (a) Banking or other financial service;
- (b) Real estate brokerage, management, sale, ownership, or leasing;
- (c) Legal, medical, dental, accounting, engineering, or any other professional or consulting service;
- (d) Furnishing recreational or athletic facilities; and
- (e) Serving food or beverages to be consumed on or adjacent to the premises where they are sold.

Subd. 5. "Eligible small business" for the purpose of section 3, subdivision 5, means a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

- (a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and
- (b) Has 20 or fewer full time employees or not more than the equivalent of \$1,000,000 in annual gross revenues in the preceding fiscal year.

Subd. 6. "Dominant in its field of operation" means having more than 20 full time employees and more than \$1,000,000 in annual gross revenues.

Subd. 7. "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business domi-

nant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

Subd. 8. "Financial institution" means any bank or other financial corporation described in chapter 47, any insurance company licensed to do business under chapter 60A, and any securities broker-dealer licensed under chapter 80A.

Subd. 9. "Business loan" means a loan, other than a pollution control loan, to the owner of a small business for the interim or long term financing of capital expenditures for the acquisition or improvement of land, construction or improvement of buildings, or acquisition and installation of fixtures and equipment useful for the conduct of the business.

Subd. 10. "Pollution control loan" means a federally guaranteed loan to the owner of a small business for the acquisition, construction, or improvement of pollution control facilities as defined by federal law authorizing the guaranty. On the effective date of this section such facilities are defined in 15 U. S. Code, Sections 694-1 and 694-2, as such real and personal property as the United States small business administration, in its discretion, determines is likely to help prevent, reduce, abate, or control noise, air, or water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, and such real and personal property as the administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste shall qualify as a project for a pollution control loan.

Sec. 2. [362.51] SMALL BUSINESS FINANCE AGENCY. Subdivision 1. A small business finance agency is hereby created and is constituted as an authority to act on behalf of the state within the scope of the powers granted to it in sections 1 to 5 to implement a loan program by which, in cooperation with cities, towns, counties and private or public lenders, adequate funds may be provided on sufficiently favorable terms to assist and encourage the establishment, maintenance and growth of small business in Minnesota and to reduce to a manageable level the cost of the control of pollution and disposal of waste resulting from the operations of small business.

Because of its ability to pool or combine loans to be funded from one or more issues of bonds, the agency will be able to spread its financing costs among the small businesses to which the agency makes loans, thereby reducing costs incurred by each small business.

Subd. 2. Sections 1 to 5 are enacted to promote the welfare and prosperity of the state by maintaining and increasing the career and job opportunities of its citizens, by reducing, controlling and preventing environmental pollution and waste of resources and by protecting and enhancing the tax base on which state and local governments depend for the financing of public services.

Subd. 3. Neither the state nor any other agency or political subdivision of the state shall be liable on any bond, note or other obligation of the agency, and no bond, note, or other obligation of the agency shall constitute a debt or loan of credit of the state or any political subdivision or any individual member of the agency.

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Subd. 4. The state pledges and agrees with all holders of obligations of the agency that it will not limit or alter the rights vested in the agency to fulfill their terms, and will not in any way impair the rights or remedies of the holders, until all of the obligations and 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 such holders to enforce the payment and other provisions of the obligations, are fully met and discharged. The agency is authorized to include and recite this pledge and agreement of the state in any obligation or related document.

Subd. 5. The provisions of this section do not affect the power of the state to supervise and control the agency or to discontinue its operation or alter its organization, programs or activities or transfer its powers to a successor agency, provided that the action of the state is consistent with the provisions of subdivision 4 and that title to all property then owned by the agency will remain or vest in the agency, its successor or the state, as the case may be.

Subd. 6. The property of the agency and its income and operation shall be exempt from all taxation by the state or any of its political subdivisions and all bonds and notes of the agency shall be exempt from all taxation by the state or any of its political subdivisions.

Subd. 7. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the agency in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the agency issued pursuant to sections 1 to 4 and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received or to be received, pledges to pay or secure the payment of such notes or bonds shall at all times be free and exempt from all state, city, county or other taxation provided by the laws of the state, except for estate and gift taxes and taxes on transfers, and except for the Minnesota corporate franchise tax measured by income, so long as the interest on federal bonds is included in the income by which such tax is measured.

Subd. 8. The members and governing body of the agency shall be the commissioner of economic development and six other members holding no other elective or appointive office of the state or any local government, appointed by the governor with advice and consent of the senate. The commissioner shall be vice chairman, and the governor shall designate the chairman from among the other members, to serve as chairman at the pleasure of the governor. Minnesota Statutes, Section 15.0575, governs the terms, compensation, removal and filling of vacancies in the offices of members other than the commissioner.

Subd. 9. The members shall be responsible for management and control of the agency. A majority of the members, excluding vacant memberships, is a quorum. When a quorum is present at any meeting of which notice has been given to or waived by all absent members in the manner provided in bylaws adopted by the vote of a majority of all members, any action of the agency may be taken by the vote of a majority of the members present. Fewer than a quorum may hear reports and adjourn from time to time.

Subd. 10. The commissioner of economic development shall designate an assistant commissioner as executive director of the agency and may appoint permanent and temporary employees necessary for the administration of the agency. The governing body of the agency may enter into agreements under which the department will provide administrative support for the agency.

Sec. 3, [362.52] LOANS. Subdivision 1. The agency may make or purchase or participate with financial institutions in making or purchasing business loans and pollution control loans upon the conditions described in this section, and may enter into commitments therefor.

Subd. 2. The agency may participate with financial institutions in making or purchasing business loans not exceeding \$1,000,000 in principal amount, to be serviced by such institutions, provided that:

(a) The agency's share shall not exceed 90 percent of the total principal amount, and shall be payable with interest at the same times but not necessarily at the same interest rate as the share of the financial institution, and both shares shall be equally and ratably secured by a valid mortgage on or security interest in real and personal property;

(b) The total principal amount shall not exceed 90 percent of the value of the property securing the loan, unless the amount in excess of 90 percent is:

(1) Loaned from available funds which are not proceeds received directly from the sale of the agency's bonds or notes and are not restricted under the terms of any resolution or indenture securing bonds or notes, or

(2) Insured or guaranteed by a federal agency or by a private insurer qualified to write such insurance in the state, insuring a percentage of any claim for loss at least equal to that percentage of the value by which the loan exceeds 90 percent thereof;

(c) The value of the property securing the loan shall be certified by the participating financial institution, on the basis of such appraisals, bids, purchase orders, and engineers' certificates as the agency may require; provided that the value of items purchased and constructed from the proceeds of the loan shall not be deemed to exceed the contract price of purchase or construction;

(d) The agency shall not disburse funds under a commitment to participate in a loan for the construction or substantial improvement of property until the construction or improvement has been completed in accordance with plans and specifications, unless the financial institution furnishes an irrevocable letter of credit or a qualified corporate surety furnishes payment and performance bonds, satisfactory to the agency and in an aggregate amount equal to the amount payable under the construction contract; and

(e) No other indebtedness may be secured by a mortgage on or security interest in property securing a business loan made or purchased pursuant to this subdivision.

Subd. 3. The agency may make business loans not exceeding \$100,000 in principal amount, provided that each such loan shall be made only from the proceeds of a bond or note sold and issued to a financial institution, payable *exclusively from the repayments of principal and interest on the loan, which shall be assigned to and serviced by the financial institution.*

Subd. 4. The agency may make pollution control loans not exceeding \$500,000 in principal amount, when evidenced and secured by qualified contracts under which the full amount of payments due is guaranteed or to be guaranteed, as a full faith and credit obligation of the United States, by the United States small business administration or by another agency or instrumentality of the United States to which the same or similar power may be granted.

Subd. 5. The agency shall make every effort to assure that at least 50 percent of the principal amount of the loans made or purchased by the agency in each fiscal year consists of loans with a principal amount of \$100,000 or less to eligible small businesses as defined in section 1, subdivision 5, and shall provide technical assistance needed by eligible small business owners to complete applications and meet other requirements for those loans. The agency shall report to the legislature annually on or before October 1 as to its compliance with the requirements of this subdivision during the preceding fiscal year.

Subd. 6. (a) Each financial institution which participates in a pollution control loan or business with the agency shall annually on or before March 1 *submit a report for the prior calendar year to the agency on a form prescribed by the state auditor.* The report shall include a listing of each new and outstanding loan in which the financial institution is a participant, the amount and terms of the loan, the purpose of the loan and any other information as the state auditor may reasonably require.

(b) The agency shall annually on or before May 1 submit a report on a form prescribed by the state auditor for the prior calendar year to the state auditor on all loans which it makes purchases or participates in. The report shall include a listing of each new and outstanding loan in which the financial institution is a participant, the amount and terms of the loan, the purpose of the loan and any other information as the state auditor may reasonably require.

(c) The state auditor shall annually on or before July 1 submit a report for the prior calendar year to the governor and the legislature summarizing the report submitted pursuant to clause (b).

(d) The cost of preparing and submitting the reports required by this subdivision shall be borne by the party submitting it. Any financial institution which fails to comply with the requirements of this subdivision shall be prohibited from participating in future loans until it complies. *

Sec. 4. [362.53] **POWERS; DUTIES.** Subdivision 1. In implementing its corporate purposes and the programs described in sections 1 to 5, the agency shall have the powers and duties set forth in this section.

Subd. 2. It may sue and be sued.

Subd. 3. It may have a seal and alter the same at will.

Subd. 4. It may adopt, amend and repeal rules not inconsistent with the provisions of sections 1 to 5 as necessary to effectuate its corporate purposes.

Subd. 5. It may acquire, hold and dispose of personal property for its corporate purposes.

Subd. 6. It may enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization.

Subd. 7. It may acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the agency has an interest and may sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, may lease such property to a tenant.

Subd. 8. It may sell, at public or private sale, any note, mortgage or other instrument or obligation evidencing or securing a loan.

Subd. 9. It may procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable.

Subd. 10. It may consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other term, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the agency is a party.

Subd. 11. It may borrow money to carry out and effectuate its corporate purpose and may issue its negotiable bonds or notes as evidence of any such borrowing in accordance with sections 462A.08 to 462A.13, 462A.16 and 462A.17, all with the force and effect stated and the incidental powers granted and duties imposed in those sections. The aggregate principal amount of the agency's bonds and notes outstanding at any one time, excluding the amount satisfied and discharged by payment or provision for payment in accordance with their terms, and deducting amounts held in debt service reserve funds therefor, shall not exceed \$30,000,000 unless authorized by another law.

Subd. 12. It may issue and sell bonds, notes and other obligations payable solely from particular moneys, assets or revenues derived from its programs notwithstanding section 462A.08, subdivision 3. Obligations issued to participate in making or purchasing business loans pursuant to section 3, subdivision 2, shall be payable solely from revenues derived by the agency from repayments of such loans and from enforcement of the security therefor, or from a general reserve fund irrevocably pledged and appropriated to pay principal and interest due, for which other funds are not available. No such obligations shall be issued at any

time unless the amount then held or then deposited in the general reserve fund equals at least ten percent of the aggregate principal amount of all such obligations then issued and then outstanding.

Subd. 13. It may sell any of its obligations at public or private sale, at such price or prices as the agency shall determine, notwithstanding the limitation on sale price in the fourth sentence of section 462A.09.

Subd. 14. It may establish and collect reasonable interest and amortization payments on loans, and in connection therewith may establish and collect or authorize the collection of reasonable fees and charges or require funds to be placed in escrow, sufficient to provide for the payment and security of its bonds, notes, commitments and other obligations and for the servicing thereof, 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. It shall require the payment of all processing, administrative and guarantee fees and the deposit in escrow of all funds required by the small business administration or other federal agency or instrumentality guaranteeing any loan and shall comply and enforce compliance with all terms and conditions of each guarantee, and the prompt filing of all claims which may arise thereunder.

Subd. 15. It may cause any funds not required for immediate disbursement to be invested in direct obligations of or obligations guaranteed as to principal and interest by the United States, or in insured savings accounts, up to the amount of the insurance, in any institution the accounts of which are insured by the federal savings and loan insurance corporation or to be deposited in a savings or other account in a bank insured by the federal deposit insurance corporation or to be invested in time certificates of deposit issued by a bank insured by the federal deposit insurance corporation and maturing within one year or less. It may deposit funds in excess of the amount insured with security as provided in chapter 118. Notwithstanding the foregoing, it may invest and deposit funds into accounts established pursuant to resolutions or indentures securing its bonds or notes in such investments and deposit accounts or certificates, and with such security, as may be agreed therein with the holders or a trustee for the holders.

Subd. 16. It may provide general consultative and technical services to assist in financing small business facilities for which loans may be made pursuant to section 3. It may enter into agreements or other transactions concerning the receipt or provision of those services.

Subd. 17. Financial information, including, but not limited to, credit reports, financial statements and net worth calculations, received or prepared by the agency regarding any project loan is private data on individuals as defined in Minnesota Statutes, Section 15.162, Subdivision 5a.

Subd. 18. It may accept appropriations, gifts, grants, bequests and devises and use or dispose of them for its corporate purposes.

Subd. 19. All proceeds of the agency's bonds, notes and other obligations, any amounts granted or appropriated to the agency for the making or purchase or the insurance or guaranty of loans or for bond reserves, all income from their investment and all revenues from loans, fees and charges of the agency are annually appropriated to the agency for the accomplishment of its corporate purposes and shall be expended, 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 Minnesota Statutes, Section 16A.28, these appropriations are available until expended.

Sec. 5. [362.132] **SMALL BUSINESS FINANCE AGENCY.** The commissioner of economic development may enter into agreements or transactions with the small business finance agency created under section 2 to perform any or all administrative tasks in connection with the exercise and implementation of the powers and programs of the small business finance agency.

Sec. 6. **EFFECTIVE DATE.** This act is effective the day following final enactment.

Approved April 11, 1980

* See the amendment to section 3 in Laws 1980, Chapter 618, Section 17.

CHAPTER 548—H.F.No. 2353

An act relating to water resources; continuing the water planning board; changing its membership and duties; appropriating money; amending Minnesota Statutes 1978, Section 105.401; and Laws 1979, Chapter 333, Section 31, Subdivision 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Section 105.401, is amended to read:

105.401 **WATER PLANNING BOARD.** Subdivision 1. **MEMBERSHIP, OFFICERS, STAFF.** There is created in the executive branch of the state government a water planning board. The members of the board are: (1) the commissioner of natural resources; (2) the commissioner of health; (3) the director of the pollution control agency; (4) the commissioner of agriculture; (5) ~~the director of the energy agency; and~~ (6) the chairman of the state soil and water conservation board, or their designees; and (6) three citizen members with experience in and knowledge of water management issues appointed by the governor with the advice and consent of the senate. ~~The citizen members shall not be considered public officers of the state for the purposes of section 112.37, subdivision 1.~~ The governor shall appoint the chairperson of the board, with the advice and consent of the senate to serve at the pleasure of the governor for a four year term coterminous with the term of the governor. The chairperson shall not be a representative of the state agencies listed, but shall be the ~~seventh~~ ninth member of the

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