

CHAPTER 290—S.F.No. 2873

An act relating to Public Facilities Authority; amending certain programs; making technical changes; amending Minnesota Statutes 2008, sections 446A.03, subdivision 5; 446A.07, subdivision 8; 446A.072, subdivisions 1, 3, 5a, 9; 446A.081, subdivision 9; 446A.086, subdivisions 1, 2, 11; Minnesota Statutes 2009 Supplement, sections 446A.075, subdivisions 1a, 2, 4, 5; 446A.081, subdivision 8.

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

Section 1. Minnesota Statutes 2008, section 446A.03, subdivision 5, is amended to read:

Subd. 5. **Executive director; staffing.** (a) The authority shall employ and the chair shall appoint, with the concurrence of the authority, an executive director in the unclassified service. ~~The executive director shall be responsible for staff of the authority.~~

(b) The executive director may employ a deputy director and chief financial officer.

(c) The executive director shall:

(1) perform duties that the authority may require in carrying out its responsibilities to manage and implement the funds and programs in this chapter, implementation of debt issuance authorized by the authority, compliance with all state and federal program requirements, and state and federal securities and tax laws and regulations;

(2) employ officers, employees, and agents that the executive director considers necessary to discharge the functions of the executive director; and

(3) define the duties of officers, employees, and agents, and delegate to them any of the powers, duties, and responsibilities, subject to the executive director's control and under conditions prescribed by the executive director.

Sec. 2. Minnesota Statutes 2008, section 446A.07, subdivision 8, is amended to read:

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

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

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

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

(4) to provide loan guarantees, loans, or set-aside for similar revolving funds established by a governmental unit other than state agencies, or state agencies under sections 17.117, 103F.725, subdivision 1a, and 116J.617;

(5) to earn interest on fund accounts; ~~and~~

(6) to pay the reasonable costs incurred by the authority and the Pollution Control 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;

(7) to provide principal forgiveness or grants to the extent permitted under the Federal Water Pollution Control Act and other federal law, based on the criteria and requirements established for the wastewater infrastructure funding program under section 446A.072; and

(8) to provide loans, principal forgiveness, or grants to the extent permitted under the Federal Water Pollution Control Act and other federal law to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

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

(c) Principal forgiveness or grants provided under paragraph (a), clause (8), may not exceed 25 percent of the eligible project costs as determined by the Pollution Control Agency for project components directly related to green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, up to a maximum of \$1,000,000.

Sec. 3. Minnesota Statutes 2008, section 446A.072, subdivision 1, is amended to read:

Subdivision 1. **Establishment of program.** The authority will establish a wastewater infrastructure funding program to provide supplemental assistance to governmental units receiving funding through the clean water revolving fund 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 ~~pre-design, design and planning, improvements to,~~ and construction of municipal wastewater treatment systems, ~~including purchase of land and easements.~~ The purpose of the program is to assist governmental units demonstrating financial need ~~in building cost-efficient~~ to build cost-effective 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.

Sec. 4. Minnesota Statutes 2008, section 446A.072, subdivision 3, is amended to read:

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

(1) whose projects are listed on the Pollution Control 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 Pollution Control Agency.

(b) For a governmental unit 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 governmental unit not receiving grant funding from the USDA/RECD, application must be made to the authority on forms prescribed by the authority for the clean water revolving fund program with additional information as required by the authority. In accordance with section 116.182, the Pollution Control 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) Each fiscal year the authority shall make funds available for projects based on their ranking on the Pollution Control Agency's project priority list. The authority shall reserve funds for a project when the applicant receives a funding commitment from the United States Department of Agriculture Rural Development (USDA/RECD) or submits plans and specifications to the Pollution Control Agency. Funds must be reserved in an amount based on the project cost estimate submitted to the authority prior to the appropriation of the funds and awarded ~~in the amount reserved or an amount based on the as-bid costs, whichever is less~~ based on the lesser of that amount or the as-bid cost.

Sec. 5. Minnesota Statutes 2008, section 446A.072, subdivision 5a, is amended to read:

Subd. 5a. **Type and amount of assistance.** (a) For a governmental unit receiving grant funding from the USDA/RECD, the authority ~~shall~~ may provide assistance in the form of a grant of up to 65 percent of the eligible grant need determined by USDA/RECD. A governmental unit may not receive a grant under this paragraph for more than \$4,000,000 per project 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 its share of the eligible grant need, the authority may provide up to an additional \$1,000,000 for each additional governmental unit 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 governmental unit ~~not receiving grant funding from the USDA/RECD~~ receiving a loan from the clean water revolving fund under section 446A.07, the authority ~~shall~~ may provide assistance under this section in the form of a ~~loan for the eligible project costs plus the outstanding balance on any existing wastewater system debt that together exceed five percent of the market value of properties in the project service area, less the amount of any other grant funding received by the governmental unit for the project.~~ grant if the average annual residential wastewater system cost after completion of the project would otherwise exceed 1.4 percent of the median household income of the project service area. In determining whether the average annual residential wastewater system cost would exceed 1.4 percent, the authority must consider the total costs associated with building, operating, and maintaining the wastewater system, including existing wastewater debt

~~service, debt service on the eligible project cost, and operation and maintenance costs. Debt service costs for the proposed project are calculated based on the maximum loan term permitted for the clean water revolving fund loan under section 446A.07, subdivision 7. The amount of the grant is equal to 80 percent of the amount needed to reduce the average annual residential wastewater system cost to 1.4 percent of median household income in the project service area, to a maximum of \$4,000,000 per project 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 maximum 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 clean water revolving fund under section 446A.07. The eligible project cost is determined by multiplying the total project costs minus any other grants by the essential project component percentage calculated under subdivision 3, paragraph (c), clause (1). In no case may the amount of the grant exceed 80 percent of the eligible project cost.~~

~~(c) Notwithstanding the limits in paragraphs (a) and (b), for a governmental unit receiving supplemental assistance under this section after January 1, 2002, if the authority determines that the governmental unit'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 maximum award under this section shall 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 governmental unit's loan from the clean water revolving fund that exceeds five percent of the market value of properties in the project service area.~~

Sec. 6. Minnesota Statutes 2008, section 446A.072, subdivision 9, is amended to read:

Subd. 9. **~~Loan~~ Funding 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.

Sec. 7. Minnesota Statutes 2009 Supplement, section 446A.075, subdivision 1a, is amended to read:

Subd. 1a. **Technical assistance grants.** If requested, and if it is an eligible use of funds, the authority ~~shall~~ may provide technical assistance grants to governmental units ~~as provided in this section to analyze possible solutions to problems from seeking to address noncomplying subsurface sewage treatment systems. A grant under this subdivision shall equal~~ must not exceed \$10,000 plus \$500 per household, ~~not to exceed a~~ for a maximum total of \$40,000. ~~Technical assistance grant funds may be used by the governmental unit to~~ contract with a licensed subsurface sewage treatment system business, the University of Minnesota onsite sewage treatment program, a regional development commission, or other qualified nonprofit organization for one or more of the following services:

~~(1) contract with a licensed subsurface sewage treatment system professional for a preliminary analysis of~~ conduct site evaluations and prepare a report by a certified

subsurface sewage treatment system designer indicating the feasibility of installing new subsurface sewage treatment systems meeting the requirements of section 115.55; and

~~(2) to contract for services from the University of Minnesota Extension Service to advise the governmental unit provide independent advice on the feasibility of possible wastewater subsurface sewage treatment system alternatives and help; and~~

(3) assist the governmental unit to develop the technical, managerial, and financial capacity necessary to build, operate, and maintain individual wastewater subsurface sewage treatment systems.

Sec. 8. Minnesota Statutes 2009 Supplement, section 446A.075, subdivision 2, is amended to read:

Subd. 2. **Construction loans and grants.** (a) The authority ~~shall~~ may award loans and grants as provided in this subdivision to governmental units from the small community wastewater treatment account for projects to replace noncomplying subsurface sewage treatment systems with a subsurface sewage treatment system or systems meeting the requirements of section 115.55. A governmental unit receiving a loan or grant from the account shall own the ~~individual wastewater subsurface sewage 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 subdivision 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.

Sec. 9. Minnesota Statutes 2009 Supplement, section 446A.075, subdivision 4, is amended to read:

Subd. 4. **Applications.** Governmental units with projects on the project priority list shall submit applications for loans or grants under this program to the authority on forms prescribed by the authority. An application for technical assistance funds shall include the number of households served by subsurface sewage treatment systems in the community and a workplan and schedule for the proposed use of funds. An application for construction funds shall include:

(1) a list of the subsurface 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.

Sec. 10. Minnesota Statutes 2009 Supplement, section 446A.075, subdivision 5, is amended to read:

Subd. 5. **Awards.** (a) The authority ~~shall~~ must award loans and grants as provided in this section to governmental units with approved applications based on their ranking on the Pollution Control Agency's project priority list.

(b) Except as provided in paragraph (c), prior to the award of construction loans or grants under subdivision 2, paragraph (b), the Pollution Control Agency shall certify that the subsurface sewage treatment systems to be built appear to meet the criteria set forth in section 115.55 and rules of the Pollution Control Agency.

(c) If a governmental unit receives preliminary approval by the Pollution Control Agency of its feasibility report prepared under subdivision 1a, clause (1), the authority may make a partial construction award for eligible design costs.

(d) The total amount awarded for construction loans and grants under subdivision 2, paragraph (b), 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.

Sec. 11. Minnesota Statutes 2009 Supplement, section 446A.081, subdivision 8, is amended to read:

Subd. 8. **Loan conditions.** (a) When making loans from the drinking water revolving fund, the authority shall comply with the conditions of the federal Safe Drinking Water Act, including the criteria in this subdivision.

(b) Loans must be made at or below market interest rates, including zero interest loans, for terms not to exceed those allowed under the federal Safe Drinking Water Act.

(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, unless the recipient's average annual residential drinking water system cost after completion of the project would exceed ~~1.4~~ 1.2 percent of median household income in the recipient governmental unit or entity, in which case the loan must be fully amortized no later than 30 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).

(f) A loan may not be used to pay operating expenses or current obligations, unless specifically allowed by the federal Safe Drinking Water Act.

(g) A loan made by the authority must be secured by notes or bonds of the governmental unit and collateral to be determined by the authority for private borrowers.

Sec. 12. Minnesota Statutes 2008, section 446A.081, subdivision 9, is amended to read:

Subd. 9. **Other uses of fund.** (a) 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 the debt was incurred after the date of enactment of the act, for the purposes of construction of the necessary improvements to comply with the national primary drinking water regulations under the federal Safe Drinking Water Act;

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

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

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

(5) to earn interest on fund accounts;

(6) to pay the reasonable costs incurred by the authority, the Department of Employment and Economic Development, and the Department of Health 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;

(8) notwithstanding Minnesota Rules, part 7380.0280, to provide principal forgiveness or grants to the extent permitted under the federal Safe Drinking Water Act and other federal law;

(9) to provide loans, principal forgiveness or grants to the extent permitted under the Federal Safe Drinking Water Act and other federal law to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities; and

(10) to provide principal forgiveness or grants for 50 percent of the project cost up to a maximum of \$10,000 for projects needed to comply with national primary drinking water standards for an existing community or noncommunity public water system.

(b) Principal forgiveness or grants under paragraph (a), clause (8), must only be provided if the average annual residential drinking water system cost after completion of the project would otherwise exceed 1.2 percent of the median household income in the project service area. In determining whether the average annual residential drinking water system cost would exceed 1.2 percent, the authority must consider the total costs associated with building, operating, and maintaining the drinking water system, including debt service and operation and maintenance costs. Debt service costs for the proposed project must be calculated based on the maximum loan term permitted for the drinking water revolving fund loan under this section. The amount of the principal forgiveness or grant must be equal to 80 percent of the amount needed to reduce the average annual residential drinking water system cost to 1.2 percent of median household income in the

project service area, to a maximum of \$4,000,000 or \$15,000 per connection, whichever is less, and not to exceed 80 percent of the total project cost.

(c) Principal forgiveness or grants provided under paragraph (a), clause (9), may not exceed 25 percent of the eligible project costs as determined by the Department of Health for project components directly related to green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, up to a maximum of \$1,000,000.

(d) The authority may reduce the percentage of median household income at which a loan term could extend to 30 years under subdivision 8, paragraph (c), and at which principal forgiveness or grants could be provided under paragraph (b) if it determines that the federal money allotted to the state cannot be fully utilized without the reduction. If it determines that the reduction is necessary to fully utilize the federal money, the authority must effect the change through its approval of the annual intended use plan.

Sec. 13. Minnesota Statutes 2008, section 446A.086, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given.

(b) "Authority" means the Minnesota Public Facilities Authority.

(c) "Commissioner" means the commissioner of management and budget.

(d) "Debt obligation" means:

(1) a general obligation bond or note issued by a county, a bond or note to which the general obligation of a county is pledged under section 469.034, subdivision 2, or a bond or note payable from a county lease obligation under section 641.24, to provide funds for the construction of:

(i) jails;

(ii) correctional facilities;

(iii) law enforcement facilities;

(iv) social services and human services facilities;

(v) solid waste facilities; or

(vi) qualified housing development projects as defined in section 469.034, subdivision 2; or

(2) a general obligation bond or note issued by a governmental unit to provide funds for the construction, improvement, or rehabilitation of:

(i) wastewater facilities;

(ii) drinking water facilities;

(iii) stormwater facilities; or

(iv) any publicly owned building or infrastructure improvement that has received partial funding from grants awarded by the commissioner of employment and economic development related to redevelopment, contaminated site cleanup, bioscience, small cities development programs, and rural business infrastructure programs, for which bonds are issued by the authority under section 446A.087.

(e) "Governmental unit" means a county or a statutory or home rule charter city.

Sec. 14. Minnesota Statutes 2008, section 446A.086, subdivision 2, is amended to read:

Subd. 2. **Application.** (a) This section provides a state guarantee of the payment of principal and interest on debt obligations if:

(1) the obligations are issued after June 30, 2000 for new projects and are not issued for the purposes of refunding previous obligations;

(2) application to the Public Facilities Authority is made before issuance; and

(3) the obligations are covered by an agreement meeting the requirements of subdivision 3.

(b) Applications to be covered by the provisions of this section must be made in a form and contain the information prescribed by the authority. Applications are subject to either a fee of \$500 for each bond issue requested by a county or governmental unit or the applicable fees under section 446A.087.

(c) Application fees paid under this section must be deposited in a separate credit enhancement bond guarantee account in the general fund. Money in the credit enhancement bond guarantee account is appropriated to the authority for purposes of administering this section.

(d) Neither the authority nor the commissioner is required to promulgate administrative rules under this section and the procedures and requirements established by the authority or commissioner under this section are not subject to chapter 14.

Sec. 15. Minnesota Statutes 2008, section 446A.086, subdivision 11, is amended to read:

Subd. 11. **Amount of debt obligation authorized.** The amount of debt outstanding under this section must not exceed ~~\$500,000,000~~ \$1,000,000,000.

Sec. 16. **EMPLOYEE TRANSFER.**

Employees employed by the Department of Employment and Economic Development and assigned to the Public Facilities Authority are transferred to the Public Facilities Authority in accordance with Minnesota Statutes, section 15.039, subdivision 7.

Sec. 17. **EFFECTIVE DATE.**

Sections 1 to 16 are effective the day following final enactment.

Presented to the governor April 29, 2010

Signed by the governor April 30, 2010, 2:41 p.m.