CHAPTER 116M

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY ACT

116M.03 MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY; DEFINITIONS.

[For text of subds 1 to 16, see M.S.1984]

Subd. 17. **Funds.** "Funds" means the group of funds controlled by the authority, including the economic development fund created by section 116M.06, subdivision 4, the energy loan insurance account created by section 116M.11, the energy development account created by section 116M.12, and other accounts created to reflect the money deposited in the state treasury and under the control of the authority.

[For text of subds 18 to 26, see M.S.1984]

Subd. 27. **Cost-effective.** Except for qualified energy projects for conservation of energy, "cost-effective" means that the present value of a project's benefits exceeds the present value of its costs over the life of the project. Only the costs and benefits that can be quantified in dollars may be included in determining whether a project is cost-effective. The discount rate used in determining present value must include the time value and incremental carrying cost of money. For qualified energy projects for conservation of energy, a project is cost-effective when it has a payback period of ten years or less and the payback period is less than the useful life of the project.

Subd. 28. **Qualified diversification project.** A qualified economic diversification project means the provision of special assistance under section 116M.07, subdivision 11, paragraph (d) to a business, if the following criteria are satisfied.

(1) If the business is located outside of a distressed county, the following conditions must be satisfied:

(a) the business is principally engaged in manufacturing;

(b) the primary market for the product of the business is national or international in scope;

(c) the business would not locate or expand or continue to expand in Minnesota if special assistance were not provided;

(d) the project will result in the addition of at least 50 permanent employees;

(e) the total capital investment for the project exceeds $3,000,000;

(f) the provision of special assistance to the business will result in diversification of the state's economy by expanding the types of products produced or technologies by establishing new markets for Minnesota products or technologies; and

(g) the project will not directly result in a reduction in the employment of other Minnesota businesses.

(2) If the business is located in a distressed county, the following conditions must be satisfied:

(a) The business is principally engaged in manufacturing or in selling of tangible personal property or services in response to orders received by mail or telephone or in providing business services by mail or electronic data transmission.

(b) The business would not locate in the distressed county or an adjacent Minnesota county if special assistance were not provided;

(c) The total capital investment for the project exceeds $3,000,000 and the business will increase employment by 25 permanent positions or the total capital investment for the project exceeds $1,000,000 and the business will increase employment by 50 additional positions.

(d) For purposes of this subdivision, "manufacturing" has the meaning given in section 474.16, subdivision 6, except that the provisions of clause (b) do not apply.

History: *1Sp1985 c 13 s 249,250; 1Sp1985 c 14 art 8 s 2*

116M.04 COMMUNITY DEVELOPMENT CORPORATIONS.

[For text of subds 1 to 5, see M.S.1984]

Subd. 6. The authority shall designate a community development corporation as eligible to receive grants pursuant to this section if the corporation:

(a) Is a nonprofit corporation incorporated under chapter 317;

(b) Designates in its articles of incorporation or bylaws a specific geographic community within which it will operate. At least ten percent of the population within the designated community must have low income. Within the metropolitan area as defined in section 473.121, subdivision 2, a designated community shall be an identifiable neighborhood, or a combination of neighborhoods or home rule charter or statutory cities, townships, unincorporated areas or combinations thereof. Outstate designated communities shall to the extent possible not cross existing economic development boundaries;

(c) Limits voting membership to residents of the designated community;

(d) Has a board of directors with 15 to 30 members, unless the corporation can demonstrate to the authority that a smaller or larger board is more advantageous. At least 40 percent of the directors shall have incomes that do not exceed 80 percent of the county median family income and are not greater than 80 percent of the statewide median family income, as determined by the state demographer, and the remaining directors shall be members of the business or financial community and the community at large. At least 60 percent of the directors shall be residents of the designated community, and to the greatest extent possible directors shall be residents of the designated community. The directors who must meet the income limitations of this paragraph shall be elected by the members of the corporation, and the remaining directors may be elected by the members of the corporation or selected by the directors who must meet the income limitations of this paragraph; and

(e) Hires low income residents of the designated community to fill nonmanagerial and nonprofessional positions.

[For text of subds 7 and 8, see M.S.1984]

Subd. 8a. The energy and economic development authority shall be named as an assignee of the rights of a state-funded community development corporation on any loan or other evidence of debt provided by a community development corporation to a private enterprise. The assignment of rights shall provide that it will be effective upon the dormancy or cessation of existence of the community development corporation. "Dormancy" for the purpose of this section means the continuation of the corporation in name only without any functioning officers or activities. Upon

the cessation of the activities of a state-funded community development corporation, any assigned money paid to the energy and economic development authority shall be deposited into the economic development fund to be used for the purposes as set out in this chapter.

Subd. 9. Factors considered by the authority in approving a grant to a community development corporation should include the creation of employment opportunities, the maximization of profit and the effect on securing money from sources other than the state.

[For text of subds 10 and 11, see M.S.1984]

History: *1985 c 68 s 1; 1Sp1985 c 13 s 251,252*

116M.05 CERTIFIED STATE DEVELOPMENT COMPANY.

[For text of subds 1 to 7, see M.S.1984]

Subd. 8. **Revolving account.** The certified state development company may charge a one time processing fee up to the maximum allowed by the small business administration on a debenture issued for loan purposes. In addition, a fee for servicing loans may be imposed up to the maximum allowed by the small business administration based on the unpaid balance of each debenture. There is created in the state treasury a dedicated account in the economic development fund to receive these fees and into which these fees shall be deposited. Moneys in the dedicated account are appropriated to the energy and economic development authority to pay the costs of administration of the program, compensate members of the board of directors pursuant to section 15.0575, subdivision 3, and to create and operate a pool of money for investment in projects which further the purposes of this section.

History: *1Sp1985 c 13 s 253*

116M.06 MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY.

[For text of subd 1, see M.S.1984]

Subd. 2. **Use of funds.** The authority may use the energy loan insurance account as provided in section 116M.11. The authority may use the economic development fund in connection with small business loans, pollution control loans, and farm loans to provide financial assistance to eligible small businesses; it may use the economic development fund in connection with business loans when the loans are made as a part of the special assistance program under section 116M.07, subdivision 11; and the authority may use the energy development account in connection with energy loans to provide financial assistance to businesses; as follows:

(a) to provide loan guarantees or insurance, in whole or in part, to businesses in connection with business loans, small business loans, energy loans, farm loans, or pollution control loans;

(b) to provide direct loans to businesses in connection with business loans, small business loans, energy loans, farm loans, or pollution control loans;

(c) to participate in other investment programs as appropriate under the terms of this chapter and chapters 472 and 474;

(d) to purchase loan packages made to businesses by financial institutions in the state in connection with business loans, small business loans, energy loans, farm loans, or pollution control loans;

(e) to enter into or to pay fees on insurance contracts, letters of credit, municipal bond insurance, surety bonds, or similar obligations and other agreements or contracts with financial institutions or providers of similar services;

(f) to guarantee or insure bonds and notes issued by the authority, in whole or in part;

(g) to make interest subsidy payments on behalf of eligible small businesses to be applied to the payment of interest on bonds or notes of the authority equal to the difference in interest payable on loans and the interest payable on bonds or notes of the authority where the proceeds of these bonds or notes are used to make or participate in making these loans;

(h) for any legal purpose or program of the authority, including without limitation the payment of the cost of issuing authority bonds and notes and authority administrative costs and expenses, but not for personnel costs of positions in the approved complement of the department or the authority.

(i) to pay tax reimbursements for qualified economic diversification projects under the special assistance program pursuant to section 116M.07, subdivision 11, paragraph (d).

In addition, the authority may use the economic development fund to purchase, lease, or license technology-related products for education or training or to participate in programs where technology-related products are purchased, leased, or licensed.

The authority may create separate accounts within any of the funds for use in accordance with the separate purposes listed in this section and may irrevocably pledge and allocate money on deposit in any of the funds to the accounts for the purposes. The authority may make contracts with note and bond holders, trustees for them, financial institutions, or other persons interested in the disposition of money in the funds or their accounts with respect to the conditions upon which money in any fund or its accounts is to be held, invested, applied, and disposed of and the use of the fund and its accounts and the termination of accounts. The authority may determine to leverage amounts in accounts to be used to guarantee or insure bonds and notes of the authority or loans to businesses and may covenant as to the rate of leveraging with holders of the authority's bonds and notes or any trustee for them, financial institutions, or other persons. Money in the funds and their accounts shall, consistent with contracts with holders of the authority's bonds and notes or any trustee for them, financial institutions, or other interested persons, be invested in accordance with section 116M.08, subdivision 15, and the investment income from them, absent contractual provisions to the contrary, shall be added to and retained in the funds or their accounts if provided by the authority. The repayments to the authority of any direct loans made by the authority from money in the funds or their accounts shall be paid by the authority into the particular fund that was used in conjunction with the loan being repaid, or, as provided by the authority, into another account. The authority may collect fees, initially or from time to time, or both, with respect to any direct loan it extends or any insurance or guarantee it grants. The authority may enter into contracts and security instruments with businesses, with bond and note holders or any trustee for them, or financial institutions or other persons to provide for and secure the repayment to the authority of money provided by the authority from the funds or their accounts for direct loans or which have been paid by the authority from a fund or account pursuant to an authority guarantee or insurance.

The state covenants with all holders of the authority's bonds and notes, financial institutions, and other persons interested in the disposition of money in the funds or their accounts, which money the authority has irrevocably pledged and

allocated for any authorized purpose described in this subdivision, that the state will not take any action to limit the effect of the pledge and allocation and will not take any action to limit the effect of contracts entered into as authorized in this subdivision with respect to the pledge and allocation and will not limit or alter the rights vested in the authority or the state to administer the application of money pursuant to the pledge and allocation and to perform its obligations under the contracts. The authority may include and recite this covenant of the state in any of its bonds or notes benefiting from the pledge and allocation or contracts or related documents or resolutions.

Subd. 3. **Economic development funds; preferences.** (a) The following eligible small businesses have preference among all business applicants for financial assistance from the economic development fund:

(1) businesses located in areas of the state that are experiencing the most severe unemployment rates in the state;

(2) businesses that are likely to expand and provide additional permanent employment;

(3) businesses located in border communities that experience a competitive disadvantage due to location;

(4) businesses that have been unable to obtain traditional financial assistance due to a disadvantageous location, minority ownership, or other factors rather than due to the business having been considered a poor financial risk;

(5) businesses that utilize state resources, thereby reducing state dependence on outside resources, and that produce products or services consistent with the long-term social and economic needs of the state;

(6) businesses located in designated enterprise zones, as described in section 273.1312, subdivision 4; and

(7) business located in federally designated economically distressed areas.

(b) Except in connection with the issuance of authority bonds or notes, the authority may not invest the funds in a program that does not have financial participation from the private sector, as determined by the authority.

(c) The provisions of this subdivision do not apply to economic diversification projects.

[For text of subd 4, see M.S.1984]

Subd. 5. **Waste tire recycling account.** There is created within the economic development fund a waste tire recycling account. Money in the account is appropriated to the authority for the purpose of making waste tire recycling loans and grants.

[For text of subds 6 to 13, see M.S.1984]

History: *1Sp1985 c 13 s 254, 255; 1Sp1985 c 14 art 8 s 3,4*

116M.07 LOANS.

[For text of subd 1, see M.S.1984]

Subd. 2. **Loans; limitations.** The authority may make or purchase or participate with financial institutions in making or purchasing small business loans not exceeding $1,000,000 in principal amount with respect to small business loans made or purchased by the authority and not exceeding $1,000,000 principal amount with respect to the authority's share thereof when the authority participates in making or purchasing small business loans.

With respect to loans that the authority makes or purchases or participates with, the authority may determine or provide for their servicing, the percentage of authority participation, if any, the times the loans or participations shall be payable and the amounts of payment, their amount and interest rates, their security, if any, and other terms, conditions, and provisions necessary or convenient in connection with them and may enter into all necessary contracts and security instruments in connection with them. The authority shall obtain the best available security for all loans. The authority may provide for or require the insurance or guaranteeing of the loans or authority participations in whole or in part by the federal government or a department, agency, or instrumentality of it, by an appropriate account created with respect to the economic development fund in connection with business loans, small business loans, pollution control loans, and farm loans, and with respect to the energy development account in connection with energy loans, or by a private insurer. In connection with making or purchasing business loans or participations in them, the authority may enter into commitments to purchase or participate with financial institutions or other persons upon the terms, conditions, and provisions determined by it. Loans or participations may be serviced by financial institutions or other persons designated by the authority. The dollar limitations contained in this subdivision do not apply to energy loans and loans insured under sections 116M.11 and 116M.12.

[For text of subd 3, see M.S.1984]

Subd. 4. **Direct farm loans; limitations.** The authority may make farm loans not exceeding $100,000 in principal amount, at interest rates and subject to terms determined by the authority, provided that each loan shall be made only from the proceeds of a bond or note payable in whole or part from the repayments of principal and interest on the loan. The loans may also be guaranteed or insured by money on deposit in the economic development fund or any special account of it, and may be secured by reserve accounts and other collateral and available money as determined by the authority. The authority may enter into all necessary contracts and security instruments in connection with them. The limitation on loan amounts in this subdivision does not apply to any other loan authorized under the Minnesota energy and economic development authority act.

[For text of subds 5 to 7, see M.S.1984]

Subd. 7a. **Health care equipment loans; authority.** The authority may make or participate in making health care equipment loans in any amount and may enter into commitments therefor. The loans may be made only from the proceeds of bonds or notes issued pursuant to subdivision 7b. Before making a commitment for a loan, the authority shall forward the application to the commissioner of health for review under subdivision 7c. The authority must not approve or enter into a commitment for a loan unless the application has been approved by the commissioner of health.

Subd. 7b. **Health care equipment loans; bonds and notes.** The authority may issue its bonds and notes to provide money for the purposes specified in subdivision 7a. For this purpose, the authority may exercise all of the powers conferred on it by sections 116M.03 and 116M.06 to 116M.08 with respect to business loans, except as limited by subdivisions 7a to 7c. The principal amount of bonds and notes issued and outstanding under this subdivision at any time, computed as specified in section 116M.08, subdivision 11, may not exceed $95,000,000. This authorization is in addition to the authorization contained in section 116M.08, subdivision 11. The

bonds and notes issued to make the loans may not be insured by the authority but shall be insured by a letter of credit or bond insurance issued by a private insurer.

Subd. 7c. **Health care equipment loans; administration.** (a) The commissioner of health shall review each loan application received from the authority to determine whether the application is an approvable application. An application is approvable if the following criteria are satisfied:

(1) the hospital is owned and operated by a county, district, municipality or nonprofit corporation;

(2) the loan would not be used to refinance existing debt;

(3) the hospital was unable to obtain suitable financing from other sources;

(4) the loan is necessary to establish or maintain patient access to an essential health care service that would not otherwise be available within a reasonable distance from that facility; and

(5) the project to be financed by the loan is cost-effective and efficient.

(b) The commissioner shall determine whether the allocation available for the health care equipment loan program for a period of time specified in a rule is sufficient for all approvable applications received during the period of time. If the allocations are sufficient, the commissioner shall approve all approvable applications. If the allocations are not sufficient, the commissioner shall compare the relative merits of the approvable applications in relation to the criteria in clauses (4) and (5), rank the applications in order of priority, and approve the applications in order of priority to the extent possible within the available allocation.

(c) The commissioner of energy and economic development may charge a reasonable fee under section 16A.128 to an applicant for the costs of the departments of health and energy and economic development in the review of the application. The commissioner of energy and economic development shall transfer to the commissioner of health from the fees collected an amount sufficient to pay the costs of the commissioner of health in the review of applications effective July 1, 1985. The commissioner of health may adopt permanent rules to implement subdivisions 7a to 7c. The commissioner of energy and economic development may adopt permanent rules to implement subdivisions 7a to 7c.

Subd. 8. **Pollution control loans.** The authority may make or purchase or participate in making or purchasing pollution control loans in any amount, which may be secured in whole or part by the guarantee or insurance of the federal government or any federal department, agency, or instrumentality, by a private insurer, from guarantees or insurance provided by the economic development fund or any special account of it, by reserves, money, or other collateral required by the authority or any combination of the foregoing. To the extent consistent with this subdivision, the authority may make or purchase or participate in the making or purchasing of pollution control loans in the manner provided in subdivision 2 or 4 with respect to business loans.

Subd. 9. **Hazardous waste processing facility loans.** The authority may make, purchase, or participate in making or purchasing hazardous waste processing facility loans in any amount, and may enter into commitments therefor. A private person proposing to develop and operate a hazardous waste processing facility is eligible to apply for a loan under this subdivision. Applications must be made to the authority. The authority shall forward the applications to the waste management board for review pursuant to section 115A.162. If the waste management board does not certify the application, the authority may not approve the application nor make the loan. If the waste management board certifies the application, the

authority shall approve the application and make the loan if money is available for it and if the authority finds that:

(1) development and operation of the facility as proposed by the applicant is economically feasible;

(2) there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

(3) the facility is unlikely to be developed and operated without a loan from the authority.

The authority and the waste management board shall establish coordinated procedures for loan application, certification, and approval.

The authority may use the economic development fund to provide financial assistance to any person whose hazardous waste processing facility loan application has been certified by the waste management board and approved by the authority, and for this purpose may exercise the powers granted in section 116M.06, subdivision 2, with respect to any loans made or bonds issued under this subdivision regardless of whether the applicant is an eligible small business.

The authority may issue bonds and notes in the aggregate principal amount of $10,000,000 for the purpose of making, purchasing, or participating in making or purchasing hazardous waste processing facility loans. This amount is in addition to any other authority to issue bonds and notes under this chapter.

The authority may adopt emergency rules under sections 14.29 to 14.36 to implement the loan program under this subdivision. Emergency rules adopted by the authority remain in effect for 360 days or until permanent rules are adopted, whichever occurs first.

[For text of subd 10, see M.S.1984]

Subd. 11. **Special assistance program.** (a) The authority may operate a special assistance program and may designate certain businesses as being in need of special assistance. In connection with the special assistance program the authority may borrow money and may issue negotiable bonds and notes in accordance with section 116M.08, subdivisions 11 and 12. Notwithstanding any provision to the contrary in section 116M.08, subdivision 11, the aggregate principal amount of the authority's bonds and notes outstanding at any one time and issued in connection with the special assistance program, excluding the amount satisfied and discharged by payment and deducting amounts held in debt service reserve accounts and amounts used to make loans guaranteed or insured by the federal government or a department, agency, or instrumentality of the federal government or by a private insurer or guarantor authorized to do business in the state of Minnesota and acceptable to the authority, shall not exceed $25,000,000. This authorization is in addition to the authorization contained in section 116M.08, subdivision 11.

(b) No business shall be eligible to receive special assistance unless the authority has first passed a resolution designating the business as being in need of special assistance. The resolution shall include findings that the designation and receipt of the special assistance will be of exceptional benefit to the state of Minnesota in that at least three of the following criteria are met:

(1) in order to expand or remain in Minnesota, the business has demonstrated that it is unable to obtain suitable financing from other sources;

(2) special assistance will enable a business not currently located in Minnesota to locate a facility within Minnesota which directly increases the number of jobs within the state;

(3) the business will create or retain significant numbers of jobs within a community in Minnesota;

(4) the business has a significant potential for growth in jobs or economic activities within Minnesota within the ensuing five-year period; and

(5) the business will maintain a significant level of productivity within Minnesota within the ensuing five-year period.

(c) Special assistance may include:

(1) a business loan;

(2) a small business loan; or

(3) use of money in the economic development fund to provide financial assistance to businesses in accordance with section 116M.06, subdivision 2, except that section 116M.06, subdivision 2, clause (g), shall apply only to eligible small businesses.

(d) In the case of a qualified economic diversification project, special assistance may include, in addition:

(1) reimbursement of expenses paid or to be paid by the business for property or sales taxes for a period not to exceed five years; or

(2) use of money in the economic development fund to provide interest subsidy payments under section 116M.06, subdivision 2, clause (g) without regard to whether the business is an eligible small business.

In the case of an economic diversification project, the total amount of special assistance provided to a business may not exceed 20 percent of the total capital investment in the project. If special assistance is provided for a project located in an enterprise zone, the sum of the amount of special assistance and the tax reductions provided under section 273.1314, subdivision 9, may not exceed 30 percent of the total capital investment in the project. The amount of special assistance provided for an economic diversification project may not exceed $20,000 for each permanent job to be created by the project.

[For text of subd 12, see M.S.1984]

Subd. 13. **Loans to lenders of farm loans.** The authority may make to financial institutions loans-to-lenders to provide money to lenders to make or participate in making, or to reimburse lenders for having made or participating in having made, farm loans of a nature and for purposes as may be approved by the authority. In connection with a loan to a lender, the authority may adopt a plan for the various loan-to-lender programs it may determine to pursue. In connection with a loan-to-lender program, in addition to any other powers the authority has, the authority has the following powers:

(a) The authority may limit the type of loan to be included within a loan-to-lender program and may specify the necessary characteristics of loans to be included in the program.

(b) The authority may specify the type of lenders that may participate in a loan-to-lender program.

(c) The authority may invest in, purchase, participate in the purchase, make commitments for the purchase or participation in the purchase, and take assignments from lenders of loans.

(d) The authority may make loans and commitments for loans-to-lenders.

(e) The authority may require that no loan or interest in a loan purchased from a lender is eligible for purchase or commitment to purchase by the authority unless, at or before the time of transfer of the loan to the authority, the lender certifies that

in its judgment the loan would in all respects be a prudent investment at the purchase price paid.

(f) The authority may require, as a condition of a loan to a lender, that the lender invests the proceeds of the loan to a lender in loans of a given type, nature, and purpose and upon the terms and conditions and secured as the authority may require.

(g) The authority may require, as a condition of purchase or commitment to purchase loans or interest in loans, that these loans are made upon the terms and conditions and secured as the authority may require, and that the proceeds of the purchase, or their equivalent, be invested in loans upon the terms and conditions and secured as the authority may require.

(h) In conjunction with the purchase of these loans or interest in these loans from lenders, the authority may require the lender to furnish collateral security in an amount as the authority shall determine to be necessary to assure the payment of these loans and interest in these loans as the loans become due. This collateral security may consist of obligations, mortgages, or security interests satisfactory to the authority.

(i) The authority may require that each loan to a lender is a general obligation of the lender and may be additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security in an amount and of the types as the authority determines to be necessary to assure the payment of these loans and the interest on these loans as the loans become due and payable.

(j) Subject to any agreement with holders of bonds, the authority may collect, enforce the collection of, and foreclose on any collateral required by (h) and (i) and acquire or take possession of the collateral and sell it at public or private sale, with or without public bidding, and otherwise deal with the collateral as may be necessary to protect the interest of the authority in the collateral.

(k) In addition to the other powers granted by (j), the authority may, with respect to loan purchases and loans-to-lenders, collect and pay reasonable fees and charges and establish the terms and conditions of loan purchases and loans-to-lenders, including, without limitation, terms and conditions as to:

(1) reinvestment and commitments to reinvest by lenders of the proceeds of loan purchase or loans;

(2) the type, term, interest rate, purchase price, and conditions of loans to be purchased by the authority and of loans to be made by lenders;

(3) the warranties, representations, and services of lenders;

(4) restrictions as to the interest rates of loans or the return realized from loans to protect against the realization by lenders of excessive financial returns or benefits as determined by prevailing market conditions;

(5) consent to the modification of the rate of interest, time of payment of an installment of principal or interest, or other terms of a loan, loan-to-lender, or agreement of any kind to which the authority is a party;

(6) include in a loan or loan-to-lender the amounts necessary to pay financing charges, consultant, advisory, and legal fees, and other expenses, including interest charges, as are necessary or incidental to the loan or loan-to-lender;

(7) make and execute agreements, contracts, and other instruments necesssary or convenient in accordance with the provisions of this subdivision, including contracts with any person, firm, public corporation, governmental agency, or other entity; and

(8) other matters related to the purchases of loans and loans-to-lenders deemed necessary by the authority to accomplish the purposes of this subdivision.

(l) The authority may require in the case of a lender that any required collateral is lodged with a bank or trust company, located either within or outside the state, designated by the authority as custodian for the collateral. In the absence of this requirement, the authority may require that each lender enters into an agreement with the authority, that contains provisions as the authority deems necessary to identify, maintain, and service the collateral, and that provides that the lender holds the collateral as trustee for the benefit of the authority and is held accountable as the trustee of an express trust for the application and disposition of the collateral, including the income and proceeds from the collateral, solely for the uses and purposes as provided in the agreement. A copy of the agreement and any revisions or supplements to it, which revisions or supplements may, among other things, add to, delete from, or substitute items of collateral pledged by the agreement, must be filed with the secretary of state to perfect the security interest of the authority in the collateral. No filing, recording, possession, or other action under article 9 of the uniform commercial code, or any other law of this state may be required to perfect the security interest of the authority in the collateral. The security interest of the authority in the collateral is deemed perfected, and the trust for the benefit of the authority so created is binding on and after the time of the filing with the secretary of state against all parties having prior unperfected or subsequent security interests or claims of any kind in tort, in contract, or otherwise against the lender. The authority may also establish additional requirements as it deems necessary with respect to the pledging, assigning, setting aside, or holding of collateral and the making of substitutions for the collateral or additions to the collateral and the disposition of income and receipts from the collateral.

History: *1Sp1985 c 13 s 256-261; 1Sp1985 c 14 art 8 s 5-8*

116M.08 POWERS; DUTIES.

[For text of subds 1 to 10, see M.S.1984]

Subd. 11. It may borrow money to carry out and effectuate its purposes 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 bonds and notes may be issued pursuant to a trust indenture that is substantially identical to a resolution pursuant to which the authority issues bonds and notes as provided in sections 462A.08 to 462A.13, 462A.16, and 462A.17, except that the authority may pledge money and securities to a trustee for the security of the holders of bonds and notes. The authority may refund bonds and notes and may guarantee or insure its bonds and notes in whole or in part with money from the funds or an account created by the authority for that purpose. The aggregate principal amount of the authority'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 accounts therefor and amounts used to make loans guaranteed or insured by the federal government or a department, an agency or instrumentality of the federal government or by a private insurer or guarantor authorized to do business in the state of Minnesota and acceptable to the authority, shall not exceed $50,000,000 unless authorized by another law.

Subd. 12. It may issue and sell bonds, notes, and other obligations payable solely from particular money, assets, or revenues derived from its programs, or any

loan, notwithstanding section 462A.08, subdivision 3. Obligations issued to participate in making or purchasing loans shall be payable solely from revenues derived by the authority from repayments of these loans and from enforcement of the security therefor, or from a debt service reserve account or accounts, or from a general reserve account or from a segregated portion thereof, or from other money or security specifically pledged by the authority, irrevocably pledged and appropriated to pay principal and interest due, for which other money is not available. A general reserve account is created and is eligible to receive direct appropriations from the state treasury or a transfer from any of the accounts as the authority may provide by resolution. The authority may irrevocably pledge and appropriate all or a segregated portion of the general reserve account to pay principal and interest due on all or one or more series of its obligations for which other money is not available, pursuant to the terms and conditions that the authority shall determine. Until so pledged and appropriated by the authority the general reserve account shall not be available to pay principal and interest on the authority's obligations. The authority may at its option provide by resolution that obligations issued to participate in making or purchasing loans be secured at the time of issuance in whole or in part by a debt service reserve account or accounts, a portion of the general reserve account segregated to secure one or more series of bonds, or the portion of the general reserve account not segregated to secure one or more series of bonds. The operation of the debt service reserve account or accounts or a segregated portion of the general reserve account and other relevant terms or provisions shall be determined by resolution or indenture of the authority. Obligations issued to make or purchase loans may be issued pursuant to an indenture of trust or a resolution of the authority. It may pledge to holders of obligations, or to a trustee, repayments from the loans, any security or collateral for them, contract rights with respect to them, and any other money or security specifically pledged by the authority for them.

[For text of subd 13, see M.S.1984]

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 money 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.

Subd. 15. It may cause any money not required for immediate disbursement, including the general reserve account, to be invested in direct obligations of or obligations guaranteed as to principal and interest by the United States, or in insured savings accounts, up to the amount of the insurance, in any institution the accounts of which are insured by the federal savings and loan insurance corporation or to be deposited in a savings or other account in a bank insured by the federal deposit insurance corporation or to be invested in time certificates of deposit issued by a bank insured by the federal deposit insurance corporation and maturing within one year or less and in the investments described in section 11A.24, subdivision 4, except clause (d) of subdivision 4. It may deposit money in excess of the amount insured with security as provided in chapter 118. Notwithstanding the foregoing, it may invest and deposit money 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.

[For text of subds 16 to 21, see M.S.1984]

History: *1Sp1985 c 13 s 262-265; 1Sp1985 c 14 art 8 s 9*

116M.10 POWERS AND DUTIES OF COMMISSIONER AND AUTHORITY RELATING TO ENERGY PROGRAMS.

[For text of subds 1 to 7, see M.S.1984]

Subd. 8. **Planning and reports.** (a) The authority shall adopt a plan to use as the basis for its investment decisions.

(b) The authority shall annually report not later than February 1 to the legislature. The report should contain recommendations for legislation as necessary to better coordinate its activities and the energy activities of state government.

[For text of subds 9 and 10, see M.S.1984]

History: *1Sp1985 c 13 s 266*

116M.105 ENERGY FUND.

An energy fund is created in the state treasury under the control of the authority. Money in the fund is appropriated to the authority to accomplish the authority's purposes.

History: *1Sp1985 c 13 s 267*

116M.11 ENERGY LOAN INSURANCE PROGRAM.

Subdivision 1. **Energy loan insurance account.** An energy loan insurance account is created in the energy fund. The account shall be used by the authority as a revolving account, and all money in the account is appropriated to the authority, for carrying out the provisions of this section with respect to loans insured under subdivision 2.

Subd. 2. **Insurance of loans.** (a) **Authorization.** The authority is authorized, upon application by a financial institution, to insure loans for cost-effective qualified energy projects as provided in this section; and under terms as the authority may prescribe by rule, to make commitments for the insuring of loans prior to the date of their execution or disbursement. In the event the authority shall determine that the energy loan insurance account is or will be depleted in connection with the use of the account as authorized by the act which has been approved or given preliminary approval by the authority, then the authority may by resolution transfer money from the energy development account created pursuant to section 116M.12.

(b) **Eligibility requirements.** The authority may by rule establish requirements for energy loans to be eligible for insurance under this section, relating to:

(1) maximum principal amount, amortization schedule, interest rate, delinquency charges, and other terms;

(2) the portion of the loan to be insured;

(3) acceleration and other remedies;

(4) covenants regarding insurance, repairs, and maintenance of the project;

(5) conditions regarding subordination of the loan security, if any, of the project to other liens against the property;

(6) the aggregate principal amount of loans to be insured in relation to the reserves from time to time on hand in the insurance account, and priorities as to the loans to be insured; and

(7) any other matters determined by the authority.

The authority shall by rule establish criteria for analyzing the cost-effectiveness of projects.

(c) **Conclusive evidence of insurability.** Any contract of insurance executed by the authority under this section shall be conclusive evidence of the eligibility of the loan for insurance, and the validity of any contract of insurance properly executed and in the hands of any approved lender shall not be contestable, except for fraud or misrepresentation on the part of the financial institution.

(d) **Premiums.** The authority is authorized to fix premium charges for the insurance of loans under this section at levels which in its judgment, taking into consideration other amounts available in the account, will be sufficient to cover and maintain a reserve for loan losses.

(e) **Procedures upon default.** The authority may establish procedures to be followed by financial institutions and to be taken by the authority in the event of default upon an energy loan, including:

(1) time for filing claims;

(2) rights and interests to be assigned and documents to be furnished by the financial institution;

(3) principal and interest to be included in the claim; and

(4) conditions, if any, upon which the authority will pay the entire principal amount in default, after foreclosure and receipt of marketable title to the property.

Subd. 3. **Investment interest.** All interest and profits accruing from investment of the account's money shall be credited to and be a part of the account, and any loss incurred in the principal of the investments of the account shall be borne by the account.

Subd. 4. **Maximum authorized insurance.** The authority may not at any time issue insurance under this section aggregating in excess of an amount equal to the current balance contained in the account multiplied by ten.

History: *1Sp1985 c 13 s 268*

116M.12 ENERGY DEVELOPMENT FUND.

[For text of subds 1 and 2, see M.S.1984]

Subd. 3. **Energy development account.** An energy development account is created in the energy fund and is eligible to receive appropriations. The authority may irrevocably pledge and appropriate all or a segregated portion of the energy development account to make principal and interest payments when due on all or one or more series of its obligations for which other money is not available, pursuant to the terms and conditions the authority shall prescribe. The authority may otherwise operate the account according to section 116M.06. In the event the authority shall determine that the energy development account is or will be depleted in connection with the use of the account as authorized by the act which has been approved or given preliminary approval by the authority, then the authority may by resolution transfer money from the energy loan insurance account created pursuant to section 116M.11.

Subd. 4. **Investment income.** All interest and profits accruing from investment of the energy development account's money shall be credited to and be part of the

energy development account, and any loss incurred in the principal of the investment of the reserve account shall be borne by the energy development account. Assets of the energy development account shall be invested only in direct obligations or obligations of agencies of the United States or in insured depository accounts, up to the amount of the insurance, in any institution insured by an agency of the United States government, or in other obligations or depository accounts referred to in section 11A.24, subdivision 4, except clause (d) of that subdivision. Other money of the authority shall be invested or deposited in the manner and with the security provided in bond or note resolutions or indentures under which obligations of the authority are issued for the program.

[For text of subds 5 and 6, see M.S.1984]

History: *1Sp1985 c 13 s 269,270*