

## CHAPTER 116M

# MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY ACT

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### 116M.01 CITATION.

This chapter may be cited as the Minnesota energy and economic development authority act.

**History:** 1984 c 583 s 31,36 subd 2

### 116M.02 ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY; PURPOSES.

The legislature finds that certain public needs can best be met by the public and private sectors working in close cooperation. Two of the specific areas in which this cooperation is most needed are small business development and energy program management and financing. The energy and economic development authority created by section 116M.06 is the mechanism for cooperation in these two areas. By providing an efficient arrangement to pool financing, personnel, information, and technological knowledge, the authority, as a partnership between the public and private sectors, will promote job creation, business development, and energy policies more effectively than would be the case if these sectors acted independently.

**History:** 1983 c 289 s 62; 1984 c 583 s 36 subd 2

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

Subdivision 1. **Scope.** Each term defined in this section has the meaning given it whenever used in this chapter.

Subd. 2. **Authority.** "Authority" means the Minnesota energy and economic development authority created in section 116M.06.

Subd. 3. **Business.** "Business" means any person engaged in a trade or business of any nature that is operated for profit or not for profit.

Subd. 4. **Eligible small business.** "Eligible small business" means an enterprise determined by the authority to constitute a small business concern as defined in regulations of the United States Small Business Administration pursuant to United States Code, title 15, sections 631 to 647, as amended from time to time.

Subd. 5. **Person.** "Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies as well as natural persons. "Person" includes the plural as well as the singular.

Subd. 6. **Lender.** "Lender" means a financial institution that participates in a loan-to-lender program of the authority.

Subd. 7. **Loan-to-lender.** "Loan-to-lender" means a loan of money to a financial institution.

Subd. 8. **Targeted small business.** "Targeted small business" for the purpose of

section 116M.07, subdivision 5, means a business organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association, or cooperative, which business:

(a) 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; and

(b) is not at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in its field of operation. For the purpose of this subdivision, "dominant in its field of operation" means having more than 20 full-time employees and more than \$1,000,000 in annual gross revenues.

"Targeted small business" may include a farm business engaged in farming, agricultural production or processing, or storage of agricultural products.

**Subd. 9. Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

**Subd. 10. Loans.** "Loans" means any of the following types of loans: business loans, small business loans, pollution control loans, energy loans, and farm loans.

**Subd. 11. Business loan.** "Business loan" means a loan, other than a pollution control loan, energy loan, or farm loan, to a business for the financing of capital expenditures, on an interim or long-term basis, for the acquisition or improvement of land, acquisition, construction, rehabilitation, removal, or improvement of buildings, or acquisition and installation of fixtures and equipment useful for the conduct of the business, including all facilities of a capital nature useful or suitable for any business engaged in any enterprise promoting employment (or any of the other purposes listed below), including, without limitation, those facilities included within the meaning of the term "project" as defined in section 474.02, subdivisions 1 to 1f and section 474.03, subdivision 4.

**Subd. 12. Farm loan.** "Farm loan" means a loan to a farm business for the acquisition, installation, improvement, construction, rehabilitation, or removal of buildings, or acquisition and installation of fixtures or equipment, useful for the conduct of a farm business, or for the acquisition of livestock for breeding purposes.

**Subd. 13. Farm business.** "Farm business" means a person, partnership, corporation, or other entity that is engaged or will engage in farming or livestock or agricultural production which qualifies as an eligible small business.

**Subd. 14. Pollution control loan.** "Pollution control loan" means a loan to a business for the acquisition, construction, or improvement of pollution control facilities or operations. Pollution control facilities or operations may include real and personal property 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 real and personal property to be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

**Subd. 15. Hazardous waste processing facility loan.** "Hazardous waste processing facility loan" means a loan for the acquisition, construction, or improvement of real and personal property to be used for the collection or processing of hazardous waste as those terms are defined in section 115A.03, subdivisions 5, 13, and 25.

**Subd. 16. Waste tire recycling loan.** "Waste tire recycling loan" means a loan to a business to finance acquisition of land, buildings, or equipment, installation of

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equipment, construction of buildings, and capital improvements for waste tire processing.

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.

Subd. 18. **Energy loan.** "Energy loan" means a loan or advance of credit, to finance a "qualified energy project" as defined in this section.

Subd. 19. **Small business loan.** "Small business loan" means a loan to a business that is an "eligible small business" or a "targeted small business" for the financing of (a) capital expenditures on an interim or long-term basis for the acquisition or improvement of land, acquisition, construction, rehabilitation, removal, or improvement of buildings, or the acquisition and installation of fixtures and equipment useful to conduct a small business, including all facilities of a capital nature useful or suitable for any business engaged in any enterprise promoting employment including, without limitation, those facilities included within the meaning of the term "project" as defined in section 474.02, subdivisions 1 to 1f and section 474.03, subdivision 4; or (b) short-term costs of conducting a small business.

With respect to financing the capital expenditure or facility or short-term costs, if the authority determines that the expenditure, facility, or costs will accomplish one or more of the following purposes: tend to maintain or provide gainful employment opportunities within or for the people of Minnesota; aid, assist, and encourage the economic development or redevelopment of any political subdivision of Minnesota; or maintain or diversify and expand employment promoting enterprise within Minnesota.

Subd. 20. **Conservation.** "Conservation" means a product or system designed to reduce the amount of energy needed for an energy-consuming activity or process. Conservation includes but is not limited to thermal insulation and air infiltration control in buildings, products, or methods that reduce energy consumption for transportation or soil tillage practices, improvements in combustion efficiency or heat transfer efficiency in boilers, furnaces, or direct-fired process heaters, and changes to industrial production equipment that result in lower energy use per unit of output.

Subd. 21. **Municipality.** "Municipality" means a city, town, county, school district, special taxing district, or a municipal power agency governed by chapter 453, or a group or combination of those units operating under an agreement to jointly undertake projects authorized by sections 116M.09 to 116M.13.

Subd. 22. **Alternative energy resource.** "Alternative energy resource" means a source of energy available from indigenous Minnesota resources including but not limited to peat, biomass, solar energy, wind, municipal wastes, agricultural or forestry wastes, hydropower, and agricultural crops suitable for conversion to an energy fuel.

Subd. 23. **Renewable energy resource.** "Renewable energy resource" means a source of energy occurring in Minnesota which, when consumed for energy purposes, is replaced within a matter of days, months, or years by new or additional supplies of the energy source. Renewable energy resources include, but are not limited to, forestry products and forest harvest residues, solar energy, wind energy, waterpower, and agricultural wastes.

Subd. 24. **Energy recovery.** "Energy recovery" means the extraction of energy from materials, components, or processes which would normally represent wasted energy resources. Municipal solid wastes, volatile sewer gases, and power plant waste heat, among others, offer the potential for energy recovery.

Subd. 25. **Resource recovery.** "Resource recovery" means the cost effective collection, extraction, or reuse of resources from materials, components, or processes which would normally represent wasted resources or energy, such collection, extraction or reuse to result in a lesser energy intensity than would be required to produce the same product from any nonwaste materials.

Subd. 26. **Qualified energy project.** "Qualified energy project" means acquiring, installing, rehabilitating or constructing land, buildings, capital improvements, or equipment for (1) conservation of energy or use of alternative or renewable energy resources in the operation of a business, (2) recovery or production from alternative or renewable resources of energy to be sold in the course of business, (3) production for sale in the course of business of equipment for the conservation or recovery of energy or for the use of energy from alternative or renewable resources, (4) creation of facilities to manufacture or fabricate devices and equipment for the conservation or recovery of energy or to obtain energy from alternative or renewable energy resources, if the equipment is for sale in the course of business, (5) manufacture of products by means of resource recovery for sale in the ordinary course of business.

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 at least 25 permanent positions or the total capital investment for the project exceeds \$1,000,000 and the business will increase employment by at least 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:** 1980 c 547 s 1; 1981 c 342 art 1 s 1-4; 1981 c 356 s 248; 1982 c 498 s 2,3; 1983 c 289 s 63-69; 1984 c 583 s 1,36 subd 2; 1984 c 584 s 1,2,4,5,6; 1984 c 644 s 50; 1984 c 654 art 2 s 108; 1Sp1985 c 13 s 249,250; 1Sp1985 c 14 art 8 s 2; 1Sp1986 c 3 art 1 s 14

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## 116M.04 COMMUNITY DEVELOPMENT CORPORATIONS.

Subdivision 1. For the purposes of this section, the following terms shall have the meanings given them:

Subd. 1a. "Authority" means the energy and economic development authority, formerly known as the small business finance agency.

Subd. 2. "Economic development region" means an area so designated in the governor's executive order number 60, dated June 12, 1970, as amended.

Subd. 3. "Federal poverty level" means the income level established by the United States Community Services Administration in Code of Federal Regulations, title 45, section 1060.2-2.

Subd. 4. "Low income" means an annual income below the federal poverty level.

Subd. 5. The authority shall administer this section and shall enforce the rules related to the community development corporations promulgated by the authority. The authority may amend, suspend, repeal or otherwise modify these rules as provided for in chapter 14.

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.

Subd. 7. The authority shall approve a grant to a community development corporation only for a project carried on within the designated community, except when the corporation demonstrates that a project carried on outside will have a significant impact inside the designated community.

Subd. 8. The authority may approve a grant to a community development corporation for planning, including organization of the corporation, training of the directors, creation of a comprehensive community economic development plan, and development of a proposal for a venture grant, or for establishment of a business venture, including assistance to an existing business venture, purchase of partial or full ownership of a business venture, or development of resources or facilities necessary for the establishment of a business venture.

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.

Subd. 10. Grants under this section shall not be available for programs conducted by churches or religious organizations or for securing or developing social services.

Subd. 11. A person shall not be excluded from participation in a program funded pursuant to this section because of race, color, religion, sex, age or national origin.

**History:** 1977 c 391 s 1; 1978 c 709 s 4,5; 1981 c 284 s 2; 1981 c 356 s 213,248; 1982 c 424 s 130; 1983 c 289 s 58-60,115 subd 1; 1984 c 583 s 36 subd 2; 1985 c 68 s 1; 1Sp1985 c 13 s 251,252

#### 116M.05 CERTIFIED STATE DEVELOPMENT COMPANY.

Subdivision 1. **Purpose; objectives.** The energy and economic development authority may create, promote, and assist a state development company, also known as a "503" certified development company, that will qualify as a certified development company for the purposes of United States Code, title 15, section 697, and Code of Federal Regulations, title 13, section 108.503.

The authority shall utilize the development company program to stimulate the state's economic activity.

The development company and its directors and officers shall comply with the organizational, operational, regulatory, and reporting requirements as promulgated by the United States Small Business Administration and the guidelines contained in the bylaws, articles of incorporation, and standard operating procedure prescribed by the Small Business Administration.

Subd. 2. **Capital, loan limits; membership requirements.** The capital for a certified state development company shall be derived from corporate holders or members, each of whom shall not have more than ten percent of the voting control of the certified state development company. The company shall have a minimum of ten members. Membership shall be, to the greatest extent practicable, in proportion to the population of each economic development region to the total population of the state. The loan limit of each member shall be established at the time of its acceptance as a member and shall be computed on the basis of the financial information contained in or made a part of its application for membership. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with the provisions of the articles of incorporation and this section.

Subd. 3. **Members.** Members shall be representatives of local government, community organizations, financial institutions, and businesses in Minnesota and which, upon application, have been accepted for membership by a majority vote of the members of the board of directors present at any regular or special meeting of the board at which there is a quorum. A "financial institution" is a business organization recognized under Minnesota or federal law as a banking institution, trust company, savings and loan association, insurance company, or a corporation, partnership, foundation or other institution licensed to do business in the state of Minnesota and engaged primarily in lending or investing money.

Subd. 4. **Membership applications.** Applications for membership shall be submitted to the board of directors on forms provided by the corporation and accompa-

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nied by additional information as the form may require. Application forms shall provide that if the application is approved, and the applicant accepted for membership by the board of directors prior to withdrawal of the application, the applicant agrees to become a member upon the acceptance and to assume all of the rights and obligations of a member as set forth in the corporation's bylaws, the articles of incorporation, and chapter 301 and sections 116J.58 to 116J.61, 116J.68 to 116J.873, and 116M.02 to 116M.12. Notice of approval or rejection of an application shall be forwarded, by certified or registered United States mail, to the applicant for the attention of the person signing the application, within 15 days following the date upon which the approval or rejection is made. Approval of the application constitutes acceptance of the applicant as a member of the corporation.

**Subd. 5. Officers.** The executive officers of the corporation shall be a president, one or more vice presidents including the executive vice president, a secretary, and a treasurer. None of the officers, except the president, need be directors. One person may hold the offices and perform the duties of any two or more of the offices. The board of directors by majority vote may leave unfilled for any period it may fix any office except that of president, treasurer, or secretary.

**Subd. 6. Energy and economic development authority assistance.** The energy and economic development authority shall make available the professional staff of the energy and economic development authority to provide services to the certified state development company including, but not limited to, accounting, legal and business assistance services. The staff shall have the capability to package, process, close and service loans made through the development company.

**Subd. 7. Reports.** The development company shall submit to the Small Business Administration annual reports on its operation. When requested by the Small Business Administration, interim reports of a similar nature will be provided. The reports shall be provided in accordance with the instructions and attachments set forth by the Small Business Administration. The development company shall comply with all regulations issued under the small business investment act of 1958, as amended, as well as applicable state and federal laws affecting its operation.

**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:** 1981 c 356 s 248; 1982 c 641 art 1 s 13; 1983 c 289 s 61, 115 subd 1; 1984 c 583 s 36 subd 2; 1984 c 604 s 4; 1Sp1985 c 13 s 253

## 116M.06 MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY.

**Subdivision 1. Creation; successor status.** The small business finance agency created by Laws 1980, chapter 547, is renamed the Minnesota energy and economic development authority and may act on behalf of the state within the scope of the powers granted to it in this chapter to implement loan programs and to provide financial assistance under the funds by which, the authority alone or in cooperation with cities, towns, counties, and private or public lenders, may provide adequate funds or incentives to financing such as guarantees or insurance on sufficiently favorable terms to assist and encourage the establishment, maintenance, and growth of eligible small businesses or employment opportunities 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 businesses and to improve the efficiency of energy use by businesses and to encourage businesses to provide a reliable and economic supply of energy for use by the state's households, business establishments, and municipalities, through energy conservation, the production or recovery of energy from alternative or renewable energy resources, or the production of equipment or products which conserve, produce, or recover energy.

The authority so named is the legal successor in all respects of the small business finance agency as originally named and constituted and all bonds, resolutions, contracts, and liabilities of that original agency are the bonds, resolutions, contracts, and liabilities of the authority as so renamed and reconstituted.

Because of its ability to pool or combine loans to be funded from one or more issues of bonds, whether or not the interest on the bonds is exempt from federal income taxes, the authority will be able to spread its financing costs among the recipients of its financial assistance, thereby reducing the costs to the recipients of the authority's financial assistance.

**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.

**Subd. 4. Creation of economic development fund.** There is created the economic development fund to be administered by the authority. All money in the fund is appropriated to the authority to accomplish the authority's purposes.

The money in the economic development fund must be used as provided in this chapter and chapters 472 and 474, to provide financial assistance to businesses, eligible small businesses, targeted small businesses, and farm businesses. This financial assistance includes business loans, pollution control loans, small business loans, and farm loans and the purchasing, leasing, or licensing of technology-related products or rights to the products.

**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.

**Subd. 6. Public purposes.** This chapter is 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 energy and other resources; and by protecting and enhancing the tax base on which state and local governments depend for the financing of public services.

**Subd. 7.** 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 authority, and no bond, note, or other obligation of the authority shall constitute a debt or loan of credit of the state or any political subdivision or any individual member of the authority.

**Subd. 8.** The state pledges and agrees with all holders of obligations of the authority that it will not limit or alter the rights vested in the authority 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 authority is authorized to include and recite this pledge and agreement of the state in any obligation or related document.

**Subd. 9.** The provisions of this section do not affect the power of the state to supervise and control the authority 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 authority will remain or vest in the agency, its successor or the state, as the case may be.

**Subd. 10.** The property of the authority and its income and operation shall be exempt from all taxation by the state or any of its political subdivisions.

**Subd. 11. Membership.** The members and governing body of the authority shall be the commissioner and ten other members appointed by the governor. The governor shall designate the chair from among the members. The board shall elect a secretary and other officers as it deems fit from among its members. On July 1, 1983, the governor shall have authority to appoint new members. The terms of the current members shall expire, respectively, when they are replaced and new members are appointed by the governor and qualified. Section 15.0575 governs the terms, compensation, removal and filling of vacancies in the offices of members other than the commissioner.

**Subd. 12. Exercise of powers.** The powers of the authority are vested in the members. 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

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majority of all members, any action of the authority 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. 13. Staffing.** The commissioner shall appoint permanent and temporary employees necessary for the administration of the authority. The commissioner may enter into agreements under which staff from private corporations, agencies, or other organizations are loaned to the authority for the purpose of performing its duties.

**History:** 1980 c 547 s 2; 1981 c 356 s 215, 216, 248; 1982 c 641 art 1 s 14; 1983 c 213 s 5; 1983 c 216 art 2 s 2, 18; 1983 c 289 s 70-78, 116; 1984 c 583 s 2-9, 36 subd 2; 1984 c 654 art 2 s 109; 1Sp1985 c 13 s 254, 255; 1Sp1985 c 14 art 8 s 3, 4; 1986 c 444

## 116M.07 LOANS.

**Subdivision 1. Generally.** The authority may make or purchase or participate with financial institutions in making or purchasing business loans, small business loans, energy loans, pollution control loans, and farm loans upon the conditions described in this section, and may enter into commitments therefor. In addition, the authority may engage in loans-to-lenders programs with respect to farm loans to the extent set forth in this section.

**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.

**Subd. 3. Waste tire recycling loans and grants.** The authority may make waste tire recycling loans to businesses. Applications for the loans are not complete unless the waste tire recycling project for which the loan is to be made is certified to be technically feasible by the director of the pollution control agency. The authority may make grants from the waste tire recycling account for studies necessary to demonstrate the technical and economic feasibility of a proposed waste tire recycling project. A grant must be less than \$30,000 and may not exceed 75 percent of the costs of the study. The commissioner shall adopt rules for administration of waste tire recycling grants and loans.

**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.

**Subd. 5. Farm loans; public purpose.** The encouragement of the investment of private capital in the agricultural sector through the use of financing to provide farm loans at interest rates lower than those available in conventional farm credit markets is a public purpose and is necessary to protect the health, safety, and general welfare of the people of this state.

**Subd. 6. Farm loans; authority.** The authority may make or purchase or participate with financial institutions in making or purchasing farm loans not exceeding \$100,000 in principal amount, upon the conditions described in this section, and may enter into commitments for farm loans, on the terms and conditions and with the security determined by the authority. The loans may be made or purchased only from the proceeds of bonds or notes issued pursuant to subdivision 7. For this purpose, the authority may exercise all powers conferred on it by sections 116M.03 and 116M.06 to 116M.08 with respect to business loans. Loans and loan commitments must be originated and serviced by one or more financial institutions authorized to transact that business in this state. The authority shall make or participate in farm loans only when the authority determines that financing is not otherwise available, in whole or in part, from private lenders on equivalent terms and conditions.

**Subd. 7. Farm loans; bonds and notes.** The authority may issue its bonds or notes to provide money for the purposes specified in subdivision 6, which are payable in whole or in part from repayments of principal and interest on farm loans. For this purpose, the authority may exercise all powers conferred upon it by sections 116M.03 and 116M.06 to 116M.08 with respect to bonds or notes to be issued to provide money for business loans. 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 \$30,000,000. This authorization is in addition to the authorization contained in section 116M.08, subdivision 11. Sections 116M.03 and 116M.06 to 116M.08 are applicable to bonds and notes covered by this subdivision and the application of the proceeds from the bonds and notes.

**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:

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(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.

**Subd. 10. Targeted loans.** The authority shall make every effort to assure that at least 50 percent of the loans made or purchased by the authority in each fiscal year consists of loans with a principal amount of \$100,000 or less to targeted small businesses as defined in section 116M.03, subdivision 8, and the financial management division shall provide technical assistance needed by targeted small businesses to complete applications and meet other requirements for those loans. The authority shall report to the legislature annually on or before February 1 as to its compliance with the requirements of this subdivision during the preceding fiscal year. Noncompliance with this subdivision shall not affect the validity of bonds and notes heretofore or hereafter issued.

**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

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(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.

**Subd. 12. Reports.** (a) Each financial institution that participates in a pollution control or business loan with the authority shall annually on or before March 1 submit a report for the prior calendar year to the authority on a form prescribed by the commissioner. 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 commissioner may reasonably require.

(b) The authority shall annually on or before May 1 submit a report on a form prescribed by the commissioner for the prior calendar year to the state auditor on all loans that 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 that fails to comply with the requirements of this subdivision shall be prohibited from participating in future loans until it complies.

**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 necessary 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:** 1980 c 547 s 3; 1980 c 618 s 17; 1981 c 342 art 1 s 5,6; 1981 c 356 s 248; 1982 c 498 s 4; 1982 c 641 art 1 s 15; 1983 c 289 s 79; 1984 c 583 s 10-15,36 subd 2; 1984 c 584 s 3,7-11; 1984 c 640 s 32; 1984 c 644 s 51; 1984 c 654 art 2 s 110; 1Sp1985 c 13 s 256-261; 1Sp1985 c 14 art 8 s 5-8

#### **116M.08 POWERS; DUTIES.**

Subdivision 1. In implementing the purposes and the programs described in this chapter and chapters 472 and 474, the authority 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, including emergency rules, not inconsistent with the provisions of this chapter and chapters 472 and 474 as necessary to effectuate its purposes. The authority to adopt emergency rules expires June 30, 1985.

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 the amounts, and from the insurers, as may be necessary or desirable. It may obtain municipal bond insurance, letters of credit, surety obligations, or equivalent security for its bonds and notes.

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

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.

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, and notwithstanding whether or not the interest on any of its obligations is subject to federal income taxes.

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.

Subd. 16. It may provide general consultative and technical services to assist in financing the businesses to which loans may be made. 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 authority regarding any authority loan, financial assistance, or insurance is private data with regard to data on individuals as defined in section 13.02, subdivision 12 and nonpublic data with regard to data not on individuals as defined in section 13.02, subdivision 9.

Subd. 18. The authority may accept appropriations, gifts, grants, bequests, and devises and use or dispose of them for its purposes. All gifts, grants, bequests, and revenues from those sources are appropriated to the authority for the purposes of this chapter. The funding may include, but is not limited to, voluntary public utility investments and expenditures as provided by a utility and submitted in a program approved by the public utilities commission under section 216B.241. Any voluntary investments or expenditures or gifts by a utility as described in this subdivision shall be appropriated to the authority only for purposes of sections 116M.09 to 116M.13.

Subd. 19. Proceeds of the authority's bonds, notes, and other obligations; amounts granted or appropriated to the authority for the making or purchase or the insurance or guaranty of loans or for bond reserves; income from investment; money in the funds; and all revenues from loans, fees, and charges of the authority including rentals, royalties, dividends, or other proceeds in connection with technology-related products, energy conservation products, or other equipment are annually appropriated to the authority for the accomplishment of its corporate purposes and 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 section 16A.28, these appropriations are available until expended.

Subd. 20. The authority may receive payments in the form of royalties, dividends, or other proceeds in connection with technology-related products, energy conservation products, or other equipment which it has purchased or in which it has participated.

Subd. 21. The authority may do all things necessary and proper to fulfill its purpose and the purposes as provided in this chapter and chapters 472 and 474.

**History:** 1980 c 547 s 4; 1981 c 311 s 39; 1981 c 342 art 1 s 7-10; 1981 c 356 s 248; 1982 c 545 s 24; 1982 c 641 art 1 s 16; 1983 c 289 s 80-89; 1984 c 583 s 16-26, 36 subd 2; 1984 c 640 s 32; 1984 c 654 art 2 s 111; 1Sp1985 c 13 s 262-265; 1Sp1985 c 14 art 8 s 9; 1Sp1986 c 3 art 1 s 15

## 116M.09 ENERGY FINANCING POLICIES.

A reliable, economic supply of energy is essential for the state's households, business establishments, and municipalities. Imported supplies are increasingly costly, unreliable, and environmentally disadvantageous. As a result, a partnership of the

private and public sectors is needed to provide leadership, cooperation, and aid for the purposes of planning, developing, and managing economically viable energy conservation programs.

*History: 1983 c 289 s 90; 1984 c 583 s 36 subd 2*

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

**Subdivision 1. Services.** The authority shall identify general consultative and technical services to assist in financing and marketing household and municipal energy conservation or alternative energy development. It may enter into agreements or other transactions concerning the receipt or provisions of those services.

**Subd. 2. Broad interpretation.** The authority through the commissioner shall perform, direct, or closely oversee the functions and programs delegated to it. The powers granted to the authority shall be broadly interpreted to facilitate innovative leadership in all areas of energy including policy setting, goal definition, strategy planning, conservation, development of renewable and alternative energy resources, energy recovery, and monitoring.

**Subd. 3. Campaign for energy efficiency.** The authority shall promote a campaign for energy efficiency. The authority shall actively promote public awareness of the potentials and benefits of energy efficiency.

**Subd. 4. Job creation, low income.** The authority shall assure that programs under its control and direction make accommodation wherever possible for job creation and the needs of low income families and persons.

**Subd. 5. Financing programs.** The authority shall initiate and operate programs to assist the financing of qualified energy projects by:

- (a) insuring private loans to businesses; and
- (b) issuing its revenue bonds, notes, or other obligations for the purpose of making or purchasing or participating with financial institutions in making or purchasing loans to businesses.

**Subd. 6. Loans to municipalities.** The authority shall approve applications from municipalities for loans to finance improvements to public buildings for the purpose of energy conservation, reduction of the use of conventional energy sources, or the use of alternative energy resources, and make recommendations thereon to the commissioner of finance, in the event of the authorization and issuance of bonds of the state for this purpose. Financial and technical support for this program shall be provided by the financial management division. This program shall include the district heating loan program established in section 116J.36 and the program of energy improvement loans to schools created by Laws 1983, chapter 323.

**Subd. 7. Rules.** The authority may adopt emergency and permanent rules for the purpose of implementing subdivisions 5 and 6. The emergency rules need not be adopted in compliance with chapter 14 and shall be effective for 360 days or until the permanent rules are adopted, whichever occurs first. The emergency rules shall be effective upon adoption by the authority and shall be published in the State Register as soon thereafter as possible.

**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.

**Subd. 9. Conservation equipment.** The authority may assist in the financing of the development and operation of conservation or alternative or renewable energy system equipment.

**Subd. 10. Services to businesses.** The authority shall provide direct assistance to businesses that plan to begin or expand their operations into the area of energy. The assistance shall include:

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(a) providing data currently collected by the state that relates to resources, markets, economics, demographics, loans, and business planning;

(b) performing a limited technical review of prototypes or processes;

(c) conducting a limited number of feasibility studies to assist business development;

(d) conducting workshops, seminars, and other educational opportunities that relate to starting energy businesses or specific technical subjects, when appropriate, working in cooperation with the department of education and appropriate educational institutions in the state; and

(e) sharing information or networking among energy developers by use of newsletters, conferences, or the like.

**History:** 1983 c 289 s 92; 1984 c 583 s 27,36 subd 2; 1984 c 640 s 32; 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:** 1983 c 289 s 93; 1984 c 583 s 28,36 subd 2; 1Sp1985 c 13 s 268

#### 116M.12 ENERGY DEVELOPMENT FUND.

Subdivision 1. **Authority to make energy loans.** The authority may make energy loans to a business for the financing of a qualified energy project.

Subd. 2. **Revenue bonds.** The authority may borrow money and may issue bonds, notes, or other obligations as evidence of the borrowing in accordance with sections 462A.08 to 462A.17, all with the force and effect stated and the incidental powers granted and duties imposed in those sections. The authority may sell any of its obligations at public or private sale, at the price or prices as the authority determines are appropriate, notwithstanding the limitations on sale price in section 462A.09. These obligations may be issued and loans made from the proceeds in excess of the limitations contained in section 116M.07, subdivisions 2 and 4, and section 116M.08, subdivision 11.

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

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resolutions or indentures under which obligations of the authority are issued for the program.

Subd. 5. **Additional powers.** In addition to the powers specifically enumerated, the authority shall have any corporate powers necessary to effectuate or appropriate to the efficient implementation and operation of the revenue bond loan program authorized by this section, except to the extent explicitly limited by this section.

Subd. 6. **Funding.** All proceeds of the authority's bonds, notes, and other obligations, any amounts granted or appropriated to the authority to make, purchase, or insure loans, or for bond reserves, all income from the investment thereof, and all revenues from loans, fees, and charges of the authority are annually appropriated to the authority to accomplish its 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 authority.

**History:** 1983 c 289 s 94; 1984 c 583 s 29,30,36 subd 2; 1Sp1985 c 13 s 269,270

## 116M.13 LOANS TO MUNICIPALITIES.

Subdivision 1. **Qualified energy improvements.** For the purposes of this section, "qualified energy improvements" means any capital improvements to public land or buildings, including the installation of equipment, undertaken by a municipality for the principal purpose of energy conservation or to reduce usage of conventional energy sources, as provided by rules adopted by the authority.

Subd. 2. **Applications.** The authority shall establish procedures, form, and the required contents of applications to be made by municipalities for loans to finance the acquisition or construction of qualified energy improvements when state bonds are authorized and issued for this purpose.

Subd. 3. **Municipal obligation.** A loan shall not be made to a municipality until it has entered into an agreement with the state providing that the municipality shall make payments of principal and interest at least equal in the aggregate to the principal amount of the loan plus interest at the rate payable on the state bonds. The annual amounts of the payments shall be determined by the commissioner of finance, and need not coincide with the principal and interest payments on the bonds. However, the amounts due each year shall be payable prior to the times transfers are required to be made pursuant to section 16A.641. The agreement shall obligate the municipality to levy an ad valorem property tax equal to the amounts necessary to make the payments. The amount required to be levied may be reduced by any other available amounts contained in a special fund dedicated to payment of the loan obligation.

Subd. 4. **Receipts.** The principal and interest in repayment of the loans authorized by this section shall be deposited in the state treasury and credited to the state bond fund and are appropriated to the commissioner of finance for the purpose of that fund.

**History:** 1983 c 289 s 95; 1984 c 583 s 36 subd 2; 1984 c 597 s 48