

## CHAPTER 446A

## MINNESOTA PUBLIC FACILITIES AUTHORITY ACT

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

Sections 446A.01 to 446A.09 may be cited as the "Minnesota public facilities authority act."

*History: 1987 c 386 art 3 s 18*

**446A.02 DEFINITIONS.**

**Subdivision 1. Applicability.** For the purposes of sections 446A.01 to 446A.09, the terms in this section have the meanings given them.

**Subd. 2. Authority.** "Authority" means the Minnesota public facilities authority.

**Subd. 3. Commissioner.** "Commissioner" means the commissioner of energy and economic development.

**Subd. 4. Federal Water Pollution Control Act.** "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1281 to 1299.

**Subd. 5. Governmental unit.** "Governmental unit" means a state agency, home rule charter or statutory city, county, sanitary district, or other governmental subdivision.

**Subd. 6. Project.** "Project" means the acquisition, construction, improvement, expansion, repair, or rehabilitation of all or part of any structure, facility, or equipment necessary for a wastewater treatment system or water supply system.

*History: 1987 c 386 art 3 s 19*

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

**Subdivision 1. Membership.** The Minnesota public facilities authority consists of the commissioner of energy and economic development, the commissioner of finance, the director of public service, the director of the pollution control agency, and three additional members appointed by the governor from the general public with the advice and consent of the senate.

**Subd. 2. Chair; other officers.** The commissioner of energy and economic development shall serve as the chair and chief executive officer of the authority. The authority may elect other officers as necessary from its members.

**Subd. 3. Membership terms.** The membership terms, compensation, removal, and filling of vacancies of public members of the authority are as provided in section 15.0575.

**Subd. 4. Board actions.** A majority of the authority, excluding vacancies, constitutes a quorum to conduct its business, to exercise its powers, and for all other purposes.

**Subd. 5. Executive director.** The commissioner shall employ, with the concurrence of the authority, an executive director. The director shall perform duties that the authority may require in carrying out its responsibilities. The executive director's position is in the unclassified service.

**Subd. 6. Administrative services.** The commissioner shall provide administrative services to the authority.

Subd. 7. **Personal liability.** Members and officers of the authority are not liable personally for any debt or obligation of the authority.

**History:** 1987 c 386 art 3 s 20

#### 446A.04 POWERS; DUTIES.

Subdivision 1. **Bylaws; rules.** The authority shall adopt bylaws for its organization and internal management. The commissioner may adopt rules covering the authority's operations, properties, and facilities.

Subd. 2. **Power to sue; enter contracts.** The authority may sue and be sued. The authority may make and enter into contracts, leases, and agreements necessary to perform its duties and exercise its powers.

Subd. 3. **Gifts; grants.** The authority may apply for, accept, and disburse gifts, grants, loans, or other property from the United States, the state, private sources, or any other source for any of its purposes. Money received by the authority under this subdivision must be deposited in the state treasury and is appropriated to the authority to carry out its duties.

Subd. 4. **Contract for services.** The authority may retain or contract for the services of accountants, financial advisors, and other consultants or agents needed to perform its duties and exercise its powers.

Subd. 5. **Fees.** The authority may set and collect fees for costs incurred by the authority for its financings and the establishment and maintenance of reserve funds.

**History:** 1987 c 386 art 3 s 21

#### 446A.05 PROJECT LOANS.

Subdivision 1. **Loans.** The authority may make and contract to make loans to governmental units to finance projects that the governmental unit may construct or acquire. A loan may not be used to pay current expenses or obligations, except for temporary financing. A loan must be secured by notes or bonds of the borrowing governmental unit.

Subd. 2. **Rules.** The commissioner may adopt rules governing loans awarded under this section.

**History:** 1987 c 386 art 3 s 22

#### 446A.06 INDEPENDENT WASTEWATER TREATMENT GRANTS.

Subdivision 1. **Award of grants.** The authority shall award independent state grants to municipalities selected by the pollution control agency upon certification by the agency that the municipalities' projects and applications have been reviewed and approved by the agency in accordance with sections 116.16 to 116.18 and agency rules.

Subd. 2. **Rules.** The commissioner shall adopt rules containing procedures for the administration of the authority's duties as provided in subdivision 1.

**History:** 1987 c 386 art 3 s 23

**NOTE:** This section, as added by Laws 1987, chapter 386, article 3, section 23, is effective July 1, 1988. See Laws 1987, chapter 386, article 3, section 32.

#### 446A.07 WATER POLLUTION CONTROL REVOLVING FUND.

Subdivision 1. **Establishment of fund.** The authority shall establish a water pollution control revolving fund to provide loans for the purposes and eligible costs authorized under title VI of the Federal Water Pollution Control Act. The fund must be credited with repayments.

Subd. 2. **State funds.** A state matching fund is established to be used in compliance with federal matching requirements specified in the Federal Water Pollution Control Act. A state grant and loan fund is established to provide grants and loans to governmental units for the planning and construction of treatment works as specified in section 116.16, subdivision 2, paragraphs (6), (7), and (8).

**Subd. 3. Capitalization grant agreement.** The authority shall enter an agreement with the administrator of the United States Environmental Protection Agency to receive capitalization grants for the revolving fund. The authority may exercise powers necessary to comply with the requirements specified in the agreement, which must be in compliance with the Federal Water Pollution Control Act.

**Subd. 4. Intended use plan.** The pollution control agency shall annually prepare and submit to the United States Environmental Protection Agency an intended use plan. The plan must identify the intended uses of the amounts available to the water pollution control revolving fund, including a list of wastewater treatment projects and other eligible activities to be funded during the fiscal year. The agency may not submit the plan until it has received the review and comment of the authority or until 30 days have elapsed since the plan was submitted to the authority, whichever occurs first.

**Subd. 5. Applications.** Applications by municipalities and other entities identified in the annual intended use plan for loans from the water pollution control revolving fund must be made to the authority on forms requiring information prescribed by the rules of the agency adopted under this section. The authority shall send the applications to the agency within ten days of receipt. The director shall certify to the authority those applications that appear to meet the criteria set forth in the Federal Water Pollution Control Act, this section, and rules of the agency.

**Subd. 6. Award and terms of loans.** The authority shall award loans to those municipalities and other entities certified by the agency. The terms and conditions of the loans must be in conformance with the Federal Water Pollution Control Act, this section, and rules of the agency, and authority adopted under this section.

**Subd. 7. Loan conditions.** When making loans from the revolving fund, the authority shall comply with the conditions of the Federal Water Pollution Control Act, including:

(a) Loans must be made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years.

(b) The annual principal and interest payments must begin no later than one year after completion of a project. Loans must be fully amortized no later than 20 years after project completion.

(c) A loan recipient shall establish a dedicated source of revenue for repayment of the loan.

(d) The fund must be credited with all payments of principal and interest on all loans.

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

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

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

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

(4) to provide loan guarantees for similar revolving funds established by a governmental unit other than state agencies;

(5) to earn interest on fund accounts; and

(6) to pay the reasonable costs incurred by the authority and the agency of administering the fund and conducting activities required under the Federal Water Pollution Control Act, including water quality management planning under section 205(j) of the act and water quality standards continuing planning under section 303(e) of the act.

Amounts spent under clause (6) may not exceed the amount allowed under the

Federal Water Pollution Control Act. Five percent of the revolving loan fund repayments may be used by the agency and the authority for the purposes listed in clause (6).

**Subd. 9. Payments.** Payments from the fund must be made in accordance with the applicable state and federal law governing the payments, except that no payment for a project may be made to a governmental unit until and unless the authority has determined the total estimated cost of the project and ascertained that financing of the project is assured by:

(1) a loan authorized by state law or the appropriation of proceeds of bonds or other money of the governmental unit to a fund for the construction of the project; and

(2) an irrevocable undertaking, by resolution of the governing body of the governmental unit, to use all money made available for the project exclusively for the project, and to pay any additional amount by which the cost of the project exceeds the estimate by the appropriation to the construction fund of additional money or the proceeds of additional bonds to be issued by the governmental unit.

**Subd. 10. Rules of the authority.** The commissioner shall adopt rules containing procedures for the administration of the authority's duties as provided in this section, including loan interest rates, the amounts of loans, and municipal financial need.

**Subd. 11. Rules of the agency.** The agency shall adopt rules relating to the procedure for preparation of the annual intended use plan and other matters that the agency considers necessary for proper loan administration.

**History:** 1987 c 386 art 3 s 24

#### **446A.08 HEALTH CARE EQUIPMENT LOANS.**

**Subdivision 1. Authority.** The authority may make or participate in making health care equipment loans. The loans may be made only from the proceeds of bonds or notes issued under subdivision 2. Before making a commitment for a loan, the authority shall forward the application to the commissioner of health for review under subdivision 3. The authority may not approve or enter into a commitment for a loan unless the application has been approved by the commissioner of health.

**Subd. 2. Bonds and notes.** The authority may issue its bonds and notes to provide money for the purposes specified in subdivision 1. The principal amount of bonds and notes issued and outstanding under this subdivision at any time may not exceed \$95,000,000. The bonds and notes issued to make the loans may not be insured by the authority but must be insured by a letter of credit or bond insurance issued by a private insurer.

**Subd. 3. Administration.** (a) The commissioner of health shall review each loan application received from the authority to determine whether the application is an eligible application. An application is eligible if the following criteria are satisfied:

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

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

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

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

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

(b) The authority shall determine whether the allocation available for the health care equipment loan program is sufficient for all eligible applications received during a specified time. If the allocations are sufficient, the authority shall approve all eligible applications. If the allocations are not sufficient, the authority shall compare the relative merits of the eligible applications with respect to the criteria in paragraph (a), 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 authority may charge a reasonable fee under section 16A.128 to an

applicant for the costs of review of the application. The authority 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. The commissioner of health and the authority may each adopt permanent rules to implement subdivisions 1 to 3.

**History:** 1987 c 386 art 3 s 25

#### **446A.09 REPORT; AUDIT.**

The authority shall report to the legislature and the governor by January 1 of each year. The report must include a complete operating and financial statement covering the authority's operations during the year, including amounts of income from all sources. Books and records of the authority are subject to audit by the legislative auditor in the manner prescribed for state agencies.

**History:** 1987 c 386 art 3 s 26

#### **446A.10 TRANSFER OF AUTHORITY.**

Subdivision 1. **Water pollution control grants.** (a) The responsibilities of the pollution control agency for the state independent wastewater treatment grant program under section 116.18, subdivision 3a, are transferred on July 1, 1988, to the Minnesota public facilities authority under section 15.039, except that the commissioner of energy and economic development and the director of the pollution control agency shall determine which classified and unclassified positions associated with these responsibilities are transferred.

(b) Any continuing obligation with respect to grants made before September 30, 1984, under Minnesota Statutes 1984, section 116.18, subdivision 2, remains with the pollution control agency.

(c) The pollution control agency shall continue to administer the combined sewer overflow program under section 116.162, and the appropriations for the program.

Subd. 2. **Other responsibilities.**(a) The responsibilities for the health care equipment loan program under section 116M.07, subdivisions 7a, 7b, and 7c; the public school energy conservation loan program under section 116J.37; and the district heating and qualified energy improvement loan program under section 116J.36, are transferred from the Minnesota energy and economic development authority to the Minnesota public facilities authority. The director of public service shall continue to administer the municipal energy grant and loan programs under section 116J.36 and the school energy loan program under section 116J.37 until the commissioner of energy and economic development has adopted rules to implement the financial administration of the programs as provided under sections 116J.36, subdivisions 2, 3b, 3c, 8, 8a, and 11, and 116J.37, subdivisions 1 and 8.

(b) Except as otherwise provided in this paragraph, section 15.039 applies to the transfer of responsibilities. The transfer includes 8-1/2 positions from the financial management division of the department of energy and economic development to the community development division of the department of energy and economic development. The commissioner of energy and economic development and the director of public service shall determine which classified and unclassified positions associated with the responsibilities of the grant and loan programs under section 116J.36 and the school energy loan program under section 116J.37 are transferred to the director of public service and which positions are transferred to the commissioner of energy and economic development in order to carry out the purposes of this article.

**History:** 1987 c 386 art 3 s 28

**NOTE:** Subdivision 1, as added by Laws 1987, chapter 386, article 3, section 28, is effective July 1, 1988. See Laws 1987, chapter 386, article 3, section 32.

#### **446A.11 PROGRAM ADMINISTRATION.**

Subdivision 1. **Powers.** In implementing the purposes and the programs trans-

ferred to the authority by section 446A.10, subdivision 2, the authority has the powers in this section.

Subd. 2. **Rules.** It may adopt, amend, and repeal rules, including emergency rules, necessary to effectuate its purposes.

Subd. 3. **Personal property.** It may acquire, hold, and dispose of personal property for its corporate purposes.

Subd. 4. **Real property.** It may acquire real property, or an interest in real property, in its own name, by purchase or foreclosure, where the acquisition is necessary or appropriate to protect a loan in which the authority has an interest and may sell, transfer, and convey the property to a buyer and, in the event the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, may lease the property to a tenant.

Subd. 5. **Notes; mortgages; obligations; sale of.** It may sell, at public or private sale, any note, mortgage or other instrument or obligation evidencing or securing a loan.

Subd. 6. **Insurance.** It may procure insurance against a loss in connection with its property in the amounts, and from the insurers, as may be necessary or desirable.

Subd. 7. **Loan terms; modification.** It may consent, whenever it considers it necessary or desirable in the fulfillment of its purpose, to the modification of the rate of interest, time of payment, installment of principal or interest, or other term, of a contract or agreement to which the authority is a party.

Subd. 8. **Loan payments; interest and amortization.** It may establish and collect reasonable interest and amortization payments on loans, and in connection with them may establish and collect or authorize the collection of reasonable fees and charges or require money to be placed in escrow, sufficient to provide for the payment and security of its bonds, notes, commitments and other obligations and for their servicing, to provide reasonable allowances for or insurance against losses which may be incurred and to cover the cost of issuance of obligations and technical, consultative, and project assistance services.

Subd. 9. **Investments.** (a) It may cause any money not required for immediate disbursement, including the general reserve account, to be invested in direct obligations of or 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). It may deposit money in excess of the amount insured with security as provided in chapter 118.

(b) Notwithstanding paragraph (a), it may invest and deposit money into accounts established pursuant to resolutions or indentures securing its bonds or notes in investments and deposit accounts or certificates, and with security, agreed upon with the holders or a trustee for the holders.

Subd. 10. **Consultative and technical services.** It may provide general consultative and technical services to assist in financing the entities to which loans may be made. It may enter into agreements or other transactions concerning the receipt or provision of those services.

Subd. 11. **Financial information.** Financial information, including credit reports, financial statements and net worth calculations, received or prepared by the authority regarding an authority loan, financial assistance, or insurance is private data with regard to data on individuals as defined in section 13.02, subdivision 12 and nonpublic data with regard to data not on individuals as defined in section 13.02, subdivision 9.

Subd. 12. **Appropriations; gifts; grants.** The authority may accept appropriations, gifts, grants, bequests, and devises and use or dispose of them for its purposes. All gifts, grants, bequests, and revenues from those sources are appropriated to the authority.

Subd. 13. **Proceeds appropriated to authority.** Proceeds of the authority's bonds, notes, and other obligations; amounts granted or appropriated to the authority for the making or purchase or the insurance or guaranty of loans or for bond reserves; income from investment; money in the funds; and all revenues from loans, fees, and charges of the authority including rentals, royalties, dividends, or other proceeds in connection with technology-related products, energy conservation products, or other equipment are annually appropriated to the authority for the accomplishment of its corporate purposes and must be spent, administered, and accounted for in accordance with the applicable provisions of all bond and note resolutions, indentures, and other instruments, contracts, and agreements of the agency. Notwithstanding section 16A.28, these appropriations are available until expended.

Subd. 14. **General purpose.** The authority may do all things necessary and proper to fulfill its purpose.

**History:** 1987 c 386 art 3 s 29