

## CHAPTER 116R

## AIRCRAFT FACILITIES; STATE FINANCING

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**116R.01 DEFINITIONS.**

Subdivision 1. **Application.** The definitions in this section apply to sections 116R.01 to 116R.15.

*[For text of subs 2 to 5, see M.S.2006]*

Subd. 6. **Project.** "Project" means the facilities or any property described in section 116R.02, subdivision 5.

*[For text of subs 7 to 9, see M.S.2006]*

**History:** 2007 c 138 s 1,16

**116R.02 BOND ISSUE; SALE AUTHORIZATION.**

Subdivision 1. **Sale authorization.** The commissioner of finance, upon the request of the governor, may issue and sell revenue bonds as provided under sections 116R.01 to 116R.15 in one or more series or issues for the purposes provided in this section in the aggregate principal amount of up to \$350,000,000, except for refunding bonds. Proceeds of the bonds and investment income on the proceeds are appropriated in the amounts and for the purposes specified in subdivisions 2 and 5 and section 116R.04.

Subd. 2. **Loan, lease, and revenue agreements.** (a) The commissioner may loan the proceeds of the bonds, make other loans or enter into lease agreements or other revenue agreements for the project described in subdivision 5. The commissioner may provide for servicing of the loans and agreements, the times they are payable and the amounts of payments, the amount of the loans and agreements, their security, 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 commissioner shall seek to obtain the best available terms and security for the loans or agreements. The terms and security must be reasonably determined by the commissioner to be adequate and of the kind and degree which would be required by an investment banking or other financial institution. The facilities described in subdivision 5 must be pledged as collateral for the loans made and bonds issued under sections 116R.01 to 116R.15.

(b) To reduce the risk that state general funds will be needed to pay debt service on the state guaranteed bonds, the commissioner must require that the financing arrangements include a coverage test satisfactory to the commissioner so that the sum of the value of the assets and other security pledged to the payment of bonds or the rent due under any lease of the project and taken into account by the commissioner is no less than 125 percent of the difference between the outstanding state guaranteed bonds, and any cash collateral held in a debt service reserve account and pledged to the payment of principal and interest for the state guaranteed bonds and no other bonds. Assets and other security that may be taken into account include (1) net unencumbered value of the project and any collateral or third party guaranty, including a letter of credit, pledged or otherwise furnished by a user of the project or by a benefited airline company as security for the payment of rent, (2) bond proceeds, including earnings thereon, and (3) prepayments of rent, after making such adjustments the

commissioner determines to be appropriate to take into account any outstanding bonds secured by a lien on the project or rent that is prior to the lien securing the state guaranteed bonds, but excluding any cash collateral deducted from the outstanding state guaranteed bonds in applying the coverage test. The commissioner may adopt the method of valuing the assets and other security as the commissioner determines to be appropriate, including valuation of the project at its original cost less depreciation.

Subd. 3. [Repealed, 2007 c 138 s 17]

Subd. 4. **Security.** (a) If so provided in the commissioner's order or any indenture authorizing the applicable series of bonds, up to \$125,000,000 principal amount of bonds for the facility described in subdivision 5, and any bonds issued to refund these bonds may be secured by either of the following methods:

(1) upon the occurrence of any deficiency in a debt service reserve fund for a series of bonds as provided in section 116R.13, subdivision 3, the commissioner shall issue and sell deficiency bonds in a principal amount not to exceed \$125,000,000 for facilities described in subdivision 5; or

(2) the bonds may be directly secured by a pledge of the full faith, credit, and taxing power of the state and issued as general obligation revenue bonds of the state in accordance with the Minnesota Constitution, article XI, sections 4 to 7. In no event may the security provided by this paragraph extend in whole or part to any series of bonds other than the initial series of bonds so secured and any series of bonds issued to refund these bonds.

Deficiency bonds and bonds issued under clause (2) must be issued in accordance with and subject to sections 16A.641, 16A.66, 16A.672, and 16A.675, except for section 16A.641, subdivision 5, except as otherwise provided in Laws 1991, chapter 350, article 1, and except that the bonds may be sold at public or private sale at a price or prices determined by the commissioner as provided in section 116R.13, subdivision 3.

(b) The commissioner may request St. Louis County to pay or secure payment of principal and interest due on up to \$12,600,000 principal amount of revenue bonds for the facility described in subdivision 5. At the request of the commissioner, St. Louis County shall, by resolution of its county board, unconditionally and irrevocably pledge as a general obligation, its full faith, credit, and taxing power to pay or secure payment of principal and interest due on the principal amount or amounts requested by the commissioner. The general obligation and pledge of St. Louis County are not subject to and shall not be taken into account for purposes of any debt limitation. A levy of taxes for the St. Louis County general obligation is not subject to and shall not be taken into account for purposes of any levy limitations. The general obligation and the bonds secured by the general obligation may be issued without an election. Except for sections 475.61 and 475.64, chapter 475 does not apply to the general obligation or to the bonds secured by the general obligation.

(c) The commissioner may request the city of Duluth to pay or secure payment of principal and interest due on up to \$47,600,000 principal amount of revenue bonds for the facility described in subdivision 5. At the request of the commissioner, the city of Duluth shall pledge specified revenues of the city, as provided in Laws 1991, chapter 350, article 1, section 24, to pay principal and interest due on the principal amount requested by the commissioner.

(d) Bonds and deficiency bonds issued under sections 116R.01 to 116R.15 and any indenture entered into in connection with the issuance of the bonds are not subject to section 16B.06.

Subd. 5. **Use of proceeds; aircraft maintenance facility.** The proceeds of the bonds issued in a principal amount not to exceed \$250,000,000 may be used to finance the costs related to the planning, construction, improvement, or equipping of a heavy maintenance facility for aircraft and facilities subordinate and related to the facility to be located at the Duluth International Airport and any costs of issuance, reserves, credit enhancement, or an initial period of interest payments related to the bonds or the facility. The bond proceeds are appropriated to the commissioner for the purposes specified in this subdivision. With the approval of the commissioner, the owner of the facility may place a mortgage or security interest lien on the facility or any interest in or part of the facility. The mortgage is exempt from the

mortgage registry tax imposed under chapter 287. In the event of a default under the loan, lease agreement, or other revenue agreement, the facility, or any part of the facility, may be leased or sold to another person for any lawful purpose, subject to the approval of the commissioner. The approval of the commissioner is not required if the bond trustee has taken control of the facility as a result of a default.

The ownership of the facility by the owner may create no liability of the owner for payment of the debt service on the bonds if so determined by the commissioner. The owner may require as a condition of entering into the lease of the facility that the lessee or other party pay all costs, expenses, or any other obligations of ownership of the facility.

No revenues derived from the lease of the project may be used other than for a purpose related to the project, including its operation, administration, maintenance, improvement, or financing.

Subd. 6. [Repealed, 2007 c 138 s 17]

Subd. 7. [Repealed, 2007 c 138 s 17]

*[For text of subd 8, see M.S.2006]*

Subd. 9. [Repealed, 2007 c 138 s 17]

**History:** 2007 c 138 s 2–5

### 116R.03 GENERAL POWERS.

For the purpose of exercising the specific powers authorized under sections 116R.01 to 116R.15 and effectuating the other purposes of sections 116R.01 to 116R.15, the commissioner may:

(1) acquire, hold, pledge, assign, lease, or dispose of real or personal property or any interest in property, including a mortgage or security interest in a facility described in section 116R.02, subdivision 5;

(2) enter into agreements, contracts, or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association, or organization, including contracts or agreements for administration and implementation of all or part of sections 116R.01 to 116R.15;

(3) acquire real property, or an interest therein, by purchase or foreclosure, where the acquisition is necessary or appropriate;

(4) enter into agreements with lenders, borrowers, or the issuers of securities for the purpose of regulating the development and management of any facility financed in whole or in part by the proceeds of bonds or loans;

(5) enter into agreements with other appropriate federal, state, or local governmental units;

(6) contract with, use, or employ any federal, state, regional, or local public or private agency or organization, legal counsel, financial advisors, investment bankers or others, upon terms the commissioner considers necessary or desirable, to assist in the exercise of any of the powers authorized under sections 116R.01 to 116R.15 and to carry out the objectives of sections 116R.01 to 116R.15 and may pay for the services from bond proceeds or otherwise available department money; and

(7) in the event of a default under the loan, lease agreement, or other revenue agreement, the facility, or any part of the facility, may be leased or sold to another person for any lawful purpose. The lease or sale is subject to the approval of the commissioner if there are bonds outstanding for financing the facility. The approval of the commissioner is not required if the bond trustee has taken control of the facility as a result of a default.

**History:** 2007 c 138 s 6

### 116R.04 REVENUE BONDS; PURPOSES, TERMS, APPROVAL.

Subdivision 1. **Bonds.** The commissioner from time to time may issue negotiable bonds in one or more series or issues in a principal amount which, in the opinion of the commission-

er of employment and economic development, is necessary to provide sufficient funds for achieving the purposes of sections 116R.01 to 116R.15, which may include the construction of a heavy maintenance facility for aircraft to be located at the Duluth International Airport, the financing of an aircraft engine repair facility in the city of Hibbing, the payment of interest on bonds of the commissioner, the establishment of reserves to secure the bonds, and the payment of all other expenditures of the commissioner and the owner of a financed facility incident to and necessary or convenient to carry out the purposes and powers of sections 116R.01 to 116R.15. The bonds may be issued as bonds or notes or in any other form authorized by law. Except as provided in subdivision 3, section 116R.02, subdivision 4, paragraph (a), or an order of the commissioner or indenture authorizing the bonds, sections 16A.631 to 16A.675 do not apply to the bonds authorized under section 116R.02.

*[For text of subs 2 to 5, see M.S.2006]*

**History:** 2007 c 138 s 16

### **116R.05 BONDS; ORDERS AUTHORIZING, ADDITIONAL TERMS, SALE.**

*[For text of subd 1, see M.S.2006]*

**Subd. 2. Sources of payment.** Except as otherwise provided for bonds issued under section 116R.02, subdivision 4, paragraph (a), the bonds and interest payable thereon are payable solely from the following sources and are irrevocably appropriated for that purpose, but only to the extent provided in the order or indenture authorizing or securing the bonds:

- (1) revenues of any nature derived from the ownership, lease, operation, sale, foreclosure, or refinancing of a project described in section 116R.02, subdivision 5;
- (2) repayments of any loans made under sections 116R.01 to 116R.15;
- (3) proceeds of any bonds or deficiency bonds;
- (4) amounts in any account or accounts authorized by section 116R.11 or 116R.12;
- (5) amounts paid by St. Louis County under its obligations referred to in section 116R.02, subdivision 4, and amounts paid under Laws 1991, chapter 350, article 1, section 24 or 25, for the payment of bonds or interest thereon;
- (6) amounts payable under any insurance policy, guaranty, letter of credit, or other instrument securing the bonds;
- (7) any other revenues which the commissioner may pledge but excluding state appropriations unless the appropriation was specifically designated for that purpose; and
- (8) investment income on any of the sources specified in clauses (1) to (7).

*[For text of subd 3, see M.S.2006]*

**History:** 2007 c 138 s 7

### **116R.06 BONDS; OPTIONAL ORDER AND CONTRACT PROVISIONS.**

Any order authorizing any bonds or any issue of bonds or any indenture may contain provisions, which may be a part of the contract with the holders of the bonds, as to the matters referred to in this section.

(a) It may pledge or create a lien on money or property and any money held in trust or otherwise by others to secure the payment of the bonds or of any series or issue of bonds and interest thereon and of any sums due to the trustee under the indenture, and may grant different priorities in the lien for different series of bonds, subject to any agreements with bondholders which exist.

(b) It may provide for the custody, collection, securing, investment, and payment of money.

(c) It may set aside reserves or sinking funds and provide for their regulation and disposition and may create other special funds into which money may be deposited.

(d) It may limit the loans and securities to which the proceeds of sale of bonds may be applied and may pledge repayments thereon to secure the payment of the bonds or of any series or issue of bonds.

(e) It may limit the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.

(f) It may prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which that consent may be given.

(g) It may vest in a trustee or trustees property, rights, powers, and duties in trust determined by the commissioner, which may include any or all of the rights, powers, and duties of the bondholders, or may limit the rights, powers, and duties of the trustee. It may make contracts with a trustee or trustees authorizing the trustee or trustees to invest in investments that may be invested in by the state Board of Investment under section 11A.24, and apply, or dispose of and use money in any account.

(h) It may define the acts or omissions to act which constitute a default in the obligations and duties of the commissioner and may provide for the rights and remedies of the holders of bonds in the event of a default, and provide any other matters of like or different character, consistent with the general laws of the state and other provisions of sections 116R.01 to 116R.15, which in any way affect the security or protection of the bonds and the rights of the bondholders.

(i) It may incur obligations under the indenture or under any paying agency, bond registrar agreement or escrow agreement to pay the compensation and expenses of the trustee, paying agent, bond registrar or escrow agent for the bonds and to pay any sums required to be rebated to the United States to comply with applicable tax laws; and a sum sufficient to satisfy these obligations is annually appropriated to the commissioner from the general fund to the extent other revenues available for that purpose are insufficient.

**History:** 2007 c 138 s 16

#### **116R.10 STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.**

The state pledges and agrees with the holders of any bonds that the state will not limit or alter the rights vested in the commissioner to fulfill the terms of any agreements made with the bondholders, or in any way impair the rights and remedies of the holders until the bonds, together with 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 the bondholders, are fully met and discharged. The commissioner may include this pledge and agreement of the state in any agreement with the holders of bonds issued under sections 116R.01 to 116R.15.

**History:** 2007 c 138 s 16

#### **116R.11 AIRCRAFT FACILITIES FUNDS AND DEBT SERVICE ACCOUNTS.**

**Subdivision 1. Funds.** The commissioner or any trustee appointed by the commissioner under sections 116R.01 to 116R.15 shall establish and maintain an aircraft facilities fund for the project described in section 116R.02, subdivision 5. Except for amounts required by the commissioner to be deposited in a debt service account, proceeds of each issue of bonds authorized under section 116R.02, subdivision 1, must be deposited in a separate account, debt service reserve, or other account designated by the commissioner. Money in the account is appropriated to the commissioner. The commissioner or the owner of the project described in section 116R.02, subdivision 5, may withdraw proceeds of bonds for application to the appropriated purposes in the manner provided by order of the commissioner or in any indenture authorized by order of the commissioner. The commissioner may establish whatever accounts might be necessary to carry out sections 116R.01 to 116R.15. All deposits into and disbursements from accounts for the purposes and from the sources of revenue authorized by sections 116R.01 to 116R.15 and provided in an order of the commissioner or an indenture or other agreement authorized by the commissioner are appropriated for that purpose.

Subd. 2. **Accounts.** The commissioner of finance or any trustee appointed by the commissioner under sections 116R.01 to 116R.15 shall maintain permanently on official books and records debt service accounts separate from all other funds and accounts, to record all receipts and disbursements of money for principal and interest payments on each series of bonds. No later than the due date of each principal and interest payment on the bonds, the commissioner shall withdraw from the proceeds of the bonds, or from revenues on hand and available for the purpose, and shall deposit in the debt service accounts the amount, if any, required to be deposited in the account by the order of the commissioner or any indenture authorized by an order of the commissioner. All amounts in any debt service account are appropriated for the payment of principal, premiums, and interest for the bonds to which the account relates. If the Minnesota Constitution, article XI, section 7, applies to any series of bonds, amounts in the debt service account and any debt service reserve account established under section 116R.13 for the bonds, regardless of who holds or invests the amounts, must be special accounts of the state bond fund, for which the commissioner of finance shall maintain records. Amounts in the accounts must reduce any levy otherwise required by the Minnesota Constitution for payment of principal or interest on the bonds.

**History:** 2007 c 138 s 8,16

#### **116R.12 POWERS AND DUTIES OF TRUSTEE.**

Subdivision 1. **General.** The trustee, if any, designated in any indenture or order securing an issue of bonds may, in the trustee's own name, if so provided in the indenture or order:

(1) enforce all rights of the bondholders, including the right to require the commissioner to collect fees, charges, interest, and payments on leases, loans, or interests therein held by the commissioner and eligible securities purchased by it adequate to carry out any agreement as to, or pledge of, those fees, charges, and payments, and to require the commissioner to carry out any other agreements with the holders of the bonds and to perform the duties required under sections 116R.01 to 116R.15;

(2) bring suit upon the bonds;

(3) require the commissioner to account as if it were the trustee of any express trust for the holders of the bonds;

(4) enjoin any acts or things which may be unlawful or in violation of the rights of holders of the bonds; or

(5) upon a default as defined in any bond, order, or indenture, declare all the bonds due and payable, enforce any remedy available under law, and if all defaults are made good, the trustee may annul the declaration and consequences.

*[For text of subs 2 and 3, see M.S.2006]*

Subd. 4. **Approval.** The approval of the commissioner is not required if the bond trustee has taken control of the facility as a result of a default.

**History:** 2007 c 138 s 9,16

#### **116R.14 CONSTRUCTION.**

Sections 116R.01 to 116R.15 are necessary for the welfare of the state of Minnesota and its inhabitants; therefore, they shall be liberally construed to effect their purpose.

**History:** 2007 c 138 s 16

#### **116R.15 SEVERABILITY; ACTIONS.**

Each of the provisions of sections 116R.01 to 116R.15, and each application thereof to particular circumstances, is severable. If any provision or application is found to be unconstitutional and void, it is the intention that the remaining provisions and applications shall be valid and enforceable to the full extent possible under section 645.20.

**History:** 2007 c 138 s 16

#### **116R.16 [Repealed, 2007 c 138 s 17]**