

MUNICIPAL WASTEWATER TREATMENT FACILITY BONDS MEMORANDUM

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Minnesota municipalities are authorized to finance wastewater treatment and sewer facilities under Minnesota Statutes, Chapter 429, Chapter 444 or Section 115.46. In order to obtain funds necessary to pay construction costs of a sewer or water treatment facility where a municipality does not cash on hand for the project, municipalities are authorized to issue municipal bonds to investors which are secured by a pledge of special assessments, in the case of bonds issued under Chapter 429, and tax levies and revenues of the facility, in case of bonds issued under Chapter 444 or Section 115.46. The Bonds are payable over time as those assessments, tax levies and revenues are received. Such bonds are typically issued as general obligations of the municipality to which the full faith and credit and taxing powers of the municipality are irrevocably pledged for the payment of the principal, premium if any, and interest on the bonds. Whether issued pursuant to Minnesota Statutes, Chapter 429, Chapter 444 or Section 115.46, bonds issued to finance wastewater treatment and sewer facilities are subject to Minnesota Statutes, Chapter 475 which provides a variety of requirements relating, among other things, to the process of selling the bonds, payment of underwriters' discounts, scheduling the payment of principal and interest on the bonds, purposes for which bonds may be issued, election requirements, levies of taxes for payments of bonds, and refundings of existing bonds.

Financing Sewer And Wastewater Treatment Facilities Under Chapter 429.

Improvement proceedings may be initiated in any one of three following ways: (i) by a petition signed by the owners of not less than 35 percent of the real properties benefited by the improvement, (ii) by a petition signed by all of the owners of real properties benefited by the improvement, or (iii) by the initiative of the governing body.

An improvement project which is initiated by action of the governing body or by a 35% petition may be ordered only after a public hearing. Improvement projects which are initiated by a 100% petition may be ordered by the governing body without a public hearing if the petitioning property owners agree to pay 100 percent of the costs of the improvements. If any portion of the cost of the improvements, including the costs of issuing bonds, such as discount, capitalized interest and legal fees, are not assessed to the owners of real properties benefited by the

improvement, but are to be repaid by an ad valorem property tax levy, a public hearing must be held to order the wastewater treatment or sewer improvement project.

Improvement proceedings for sewer and wastewater treatment facilities are typically initiated by the action of the governing body rather than a petition by owners of benefited properties. Consequently, such improvements generally may be ordered only after a public hearing.

Not less than 10 days before the hearing, the notice of hearing must be mailed to the owner of each parcel in the area proposed to be assessed and must contain a statement that a reasonable estimate of the impact of the assessments will be available at the meeting. For purposes of determining who is to receive notice, the owners are those shown on the records of the county auditor, or in any county where tax statements are mailed by the city treasurer, the records of the city treasurer. The owners of property that are tax exempt or subject to taxation on a gross earnings basis shall be as certified by any practicable means. The notice of public hearing must be published in the municipality's legal newspaper at least twice, each publication being at least one week apart, with the second publication at least three days prior to the hearing.

The resolution ordering the improvement must be adopted within six months of the date of the public hearing by a four-fifths vote of the council, unless the improvement was initiated by a 35 percent petition, in which event it may be adopted by a majority vote. The resolution may reduce, but not increase, the extent of the improvement as stated in the notice. At any time after the municipality has ordered the improvements for a wastewater treatment or sewer facility, the municipality may issue its general obligation bonds to finance the cost of the improvements. In the event of any omission, error or mistake in any of the proceedings precedent to the ordering of the improvements, state law provides that the validity of the bonds will not be affected by such deficiencies. However, deficiencies in these proceedings may result in property owners successfully appealing the special assessments levied against their property.

Generally, in Minnesota, in order to issue general obligation ("G.O.") bonds a municipality must hold an election in which the majority of the municipality's voters must approve the issuance. However, under Chapter 475 there are exceptions to this general obligation requirement including an exception for bonds payable, at least in part, from special assessments. To issue G.O. bonds to finance a wastewater treatment or sewer project without an election, the resolution authorizing the bonds must contain covenants by the municipality that (a) at least 20% of the project costs will be specially assessed against the benefited properties and (b) the municipality will take all further actions and proceedings necessary for the final and valid levy of special assessments. If these two covenants cannot be made in the resolution authorizing the issuance of bonds, an election must be held.

Financing Wastewater Treatment and Sewer Facilities Under Chapter 444.

If the municipality plans to assess less than 20% of the project or not assess the project at all, the municipality can issue general obligation bonds without an election by pledging the revenues to be derived from the sanitary sewer system to the payment of the bonds.

The municipality must be able to covenant that the revenues pledged to the payment of the bonds will be at least 105% of the amount necessary to pay principal of an interest on the bonds when due and that it will impose and collect charges for the service, use, availability and connection to the sanitary sewer system at the times and in the amounts required to produce net revenues adequate to pay all principal and interest when due on any outstanding bonds payable from the revenues of the sanitary sewer system.

Financing Wastewater Treatment and Sewer Facilities Under Section 115.46.

Minnesota Statutes, Section 115.46 provides a specific exemption from any election requirements under any other law. Consequently, it is not necessary to pledge special assessments or revenues of a wastewater treatment or sewer system to bonds issued to financing those facilities. Thus, such bonds may be payable entirely from ad valorem tax levies. This provision is limited, however, solely to bonds issued to finance a disposal system. A disposal system means a system for disposing of sewage, industrial waste, and other wastes and includes sewer systems and treatment works.

Matters of Tax Exemption of Bonds.

Interest paid by municipalities on bonds issued for wastewater treatment and sewer facilities can be exempt from Minnesota and federal income taxation. The exemption from income taxes results in lower interest rates and consequently lower costs of borrowing for municipalities. Tax exempt bonds are subject to a number of requirements regarding the investment and expenditure of bond proceeds and the use of facilities financed with tax exempt bonds.

Prior to spending municipal funds for costs of construction of wastewater treatment or sewer facilities for which bonds will ultimately be issued, the governing body should adopt a resolution indicating its intent to reimburse itself for any project costs initially paid from cash on hand with the proceeds of bonds. Only limited expenditures made more than 60 days prior to adopting a reimbursement resolution or issuing bonds may be reimbursed from the proceeds of bonds.

Occasionally, a large industrial facility will request a municipality to assist in financing a wastewater treatment or sewage facility to be used exclusively by the industrial plant. Private use of bond financed projects where there is also private payment of the bonds may cause the interest on the bonds to be taxable. General public use of the facility will not cause the interest on the bonds to become taxable so private use concerns for wastewater treatment or sewer facilities are uncommon.